IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.72 OF 2024

Santosh Popat Thorat …..Applicant
Versus
The State of Maharashtra …. Respondent

Mr. Rameshwar Gite, Advocate for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.
Dr. Uday P. Warunjikar, Advocate i/b. Nikhilesh Pote for the complainant/informant.
PSI Angad Nemane, Chatushrungi police station is present.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R. No.761/2023 registered at Chatushrungi police station, District-Pune on 26.10.2023 under Sections 409, 420 of IPC and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, 'MPID Act').

2. Heard Shri Rameshwar Gite, learned counsel for the Applicant, Ms. Mahalakshmi Ganapathy, learned APP for

the Respondent-State and Dr. Uday Warunjikar, learned counsel for the complainant/informant.

3. The FIR is lodged by one Sanjay Modagi. He has stated that in April, 2021 one Sanjay Shinde met him. He was the father of the informant's son's friend. Sanjay told the informant that he was working in a company known as Sonitix. It was dealing in crypto currency. He told the informant that in future the crypto currency market had great future and it would be advisable to invest in that. The informant went to Sonitix Company's office. The Applicant was the owner of that company. The informant met him. At that time there was one Datta More present with the Applicant who told the informant about the company. The informant was told that their company had prepared a crypto currency by the name STX and that in future they would prepare metaverse. They had their own crypto currency exchange by the name Sonotix. They had their own blockchain through which they were planning to make hundreds of games for sale in the market. After that the Applicant had told the informant about various schemes of the

company. He told the informant that, he would get 50 times return on his investment. The Applicant further told him that they had a plan, by name Eco, ready and if the money is invested in that plan, the investment would be doubled in 20 months. In short, he represented that if the investment was made in their various schemes, the informant would get very high returns. The FIR mentions that the Applicant had arranged various seminars. About 200 people attended those seminars. Getting impressed by the representations made by the Applicant, the informant started investing in the Applicant's company since 31.5.2021. On various occasions, he transferred different amounts in the Applicant's company's bank accounts. The informant's relatives also invested in the Applicant's company. In short, they deposited around Rs.1,09,90,422/- and they were to get Rs.1,50,00,000/-. That amount was never paid. Even the principal amount was not returned. The Applicant started avoiding the informant and, therefore, the informant was convinced that he was cheated and his amount was misappropriated. On this basis, the FIR is lodged.

4. The Applicant preferred an application for anticipatory bail before the Special Court at Pune vide Criminal Bail Application No.7039/2023. The learned Additional Sessions Judge, Pune vide the order dated 28.11.2023, granted anticipatory bail to the Applicant. Paragraph-5 of the said order mentions that the Applicant had filed a purshis at Exhibit-9 stating that the Applicant was ready to deposit 40% amount i.e. Rs.43,96,168/- out of the total amount of Rs.1,09,90,422/- and was ready to deposit the remaining amount within six months in equal installments. Learned APP, in that Court, had submitted that if the Applicant deposited the total amount mentioned in the FIR; conditional anticipatory bail could be granted to him on the condition that the Applicant should attend the police station and cooperate with the investigation.

5. Based on these submissions, the anticipatory bail application was allowed. Paragraph-6 of the order mentions that it would be proper to allow that application with directions to the Applicant to deposit 40% of the amount of Rs.1,09,90,422/- i.e. Rs.43,96,168/- within ten days from the

date of the order and the remaining amount within six months in six equal monthly installments. Subsequently, not only 40% amount was not deposited, but, the installments of the balance amount were also not deposited. Instead, the Applicant preferred Criminal M.A. No.532/2023 before the same Judge for extension of time to deposit the amount. A prayer was made in that Application that the Applicant be permitted to deposit the amount of Rs.10 Lakhs and the period of three months be granted to deposit the remaining amount. Learned Additional Sessions Judge, Pune vide order dated 1.1.2024 rejected that application. The learned Judge referred to the clause 8 of the operative part of the order granting Anticipatory Bail. It mentioned that if any of the conditions was breached and if the Applicant failed to deposit any of the installments, then the order of bail would stand cancelled automatically. Learned Additional Sessions Judge, Pune vide his order dated 1.1.2024 observed that since the payment was not made before 8.12.2023; there was no question of granting extension as the bail stood cancelled already. On this reasoning, the Application for extension was rejected. Thus, as of today, the Applicant is apprehending his arrest in connection with that offence.

6. Learned counsel for the Applicant submitted that because of the financial constraints, he could not honor his commitment but he required reasonable time as mentioned in the application for extension of time to make the payment. He submitted that this Court may show indulgence and grant some time to make the payment as prayed in that application. He submitted that once the anticipatory bail was granted, it could be cancelled only under compelling circumstances and the Applicant is only asking for a reasonable time to deposit the amount.

7. Learned counsel for the first informant as well as learned APP opposed these submissions. The investigating officer is present in the Court. Learned APP, on instructions, states that the names mentioned in the FIR are not the only victims but there are many others who are similarly cheated and who are deprived of their money as they were also induced into depositing in those schemes. She submitted that

the provisions of the MPID Act are also invoked. The Applicant was never honest in his intentions right from the inception and even while obtaining anticipatory bail he has played fraud on the Court. He has not honored his commitments and, therefore, no relief can be granted to him.

8. I have considered these submissions. The gist of the FIR is already mentioned in the earlier part of this order. It is interesting to see the approach of the Applicant. The purshis which he had filed before the Sessions Court mentioned that the Applicant was ready to deposit 40% of the amount. Said amount would be deposited by the Applicant under protest and it should not be given to the complainant.

9. The other purshis regarding the balance amount mentions that the Applicant was ready to deposit the remaining amount within six months in three installments and the Applicant would be depositing that amount under protest and that it should not be given to the complainant. The Applicant did not make honest efforts to return the money to the victims.

10. Learned counsel for the Applicant today submitted that because of the financial crunch in the market there was shortage of money and, therefore, the amount could not be returned. But, from the record it is quite obvious that the investors have lost their money. There are bank transactions showing that the amount was invested by the informant and others directly in the bank account of the Applicant's company from where it was utilized by the Applicant. The fact remains that the investors have lost their money. The Applicant was never serious in returning the money. Though the investors had lost huge money, the Applicant did not take steps even at the stage of anticipatory bail to return the amount which was taken from the investors. Apart from that I do not agree with the order of learned Additional Sessions Judge, Pune in granting anticipatory bail to the Applicant at the first instance itself. The discussion was restricted to the amounts mentioned in the FIR. However, as pointed out by learned APP today that those are not the only victims but there are other victims. This fact was not taken into consideration while granting anticipatory bail to the Applicant. In any case

since the Applicant has not honored his commitment as directed by that order, the anticipatory bail granted to the Applicant was cancelled. I do not find any fault in the observations of the learned Additional Sessions Judge, Pune in rejecting the Applicant's application for extension of time to deposit the amount. That order was proper.

11. Considering this discussion, I do not think that this is a fit case to grant protection of anticipatory bail. It is more than clear that the investors have lost their huge amount. The offence under the MPID Act is clearly made out. In view of this discussion, the Applicant does not deserve the protection under Section 438 of Cr.P.C.. Hence, the Application is dismissed.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR PRAKASHRAO DESHMANE

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