IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 467 OF 2024

Damodar Shripati Pawar ..Applicant
Versus
The State of Maharashtra ..Respondents

Mr. Ranjeet M. Pawar a/w. Saurabh Desai for Applicant.
Mr. Balraj Kulkarni, APP for State/Respondent.
Mr. Shreyas P. Barsawade for Informant.

CORAM : SARANG V. KOTWAL, J.
DATE : 16 FEBRUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.482 of 2023 registered at Warje Police Station, Pune city, on 24.11.2023, under sections 406, 420, 465, 467, 468, 471, 472 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Ranjeet Pawar, learned counsel for the applicant, Mr. Balraj Kulkarni, learned APP for the State and Mr. Shreyas Barsawade, learned counsel for the Informant.

3. The F.I.R. is lodged by one Prasad Divakar. He has stated that, he had business of providing and selling heavy

equipments necessary for road construction. He was also looking after the machinery servicing, selling spare parts etc. In March 2022, the present applicant approached the informant and told him that, he was conducting business with the help of his sons. He was taking contracts for constructing roads within the jurisdiction of Baramati Municipal Corporation. He told the informant that they regularly needed machinery. In March 2022, the applicant purchased a mini compactor for Rs.12,70,000/- and he paid the entire amount. There was no dispute about that transaction.

4. In August-September 2022 the applicant, his son Ganesh Pawar and the other son met the informant and told him that the Cummins India Ltd. company, Balewadi, Pune had decided to give 15 machines of 76HP to various villagers and that the said company was in the process of giving that order to the applicant and his sons. The informant was further told that the transaction would have to be entered through Ganesh and his brothers Mahendra and Gaurav through their company M/s. G. D. Pawar. The entire transaction would be handled henceforth by Ganesh. The F.I.R. thereafter goes on to mention that Ganesh extracted

different amounts from the informant on the representation of giving purchase order sent by Cummins Company. Ganesh showed him R.T.G.S. slip, purchase order etc. and extracted around Rs.57,83,500/-. On one occasion some help was taken by Ganesh citing personal difficulty. Out of that amount, Ganesh returned only Rs.18 lakhs and other amount of Rs.39,83,500/- was not returned. Most of these amounts were taken on the pretext of depositing it as a guarantee to fulfill the purchase order of Cummins Company. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the informant has initiated prosecution U/s.138 of the Negotiable Instruments Act and there are no allegations against the present applicant in that proceedings. The F.I.R. itself mentions that the entire transaction was undertaken by Ganesh and the representation was made by Ganesh. Some amount was also returned by the applicant's son Ganesh. At present, he is not available and, therefore, to pressurize the applicant, who is 72 years of age, this F.I.R makes a reference to the applicant so that some pressure can be put on him.

6. Learned APP, as well as, the learned counsel for the informant opposed these submissions. They submitted that, from the amount which has gone in the account of Ganesh, some amount was used for purchasing gold worth Rs.7 lakhs and that gold was purchased in the name of the present applicant. Therefore, it is quite clear that, the father and the son are hand in glove in cheating the informant and misappropriating their amount. Learned counsel for the informant submitted that the applicant and his family have cheated the other persons by using the same modus operandi. Learned APP submitted that the applicant was residing with his son Ganesh and, therefore, he cannot disassociate himself from the transaction and the offence.

7. I have considered these submissions. It is true that the informant was cheated for his amount. However, the F.I.R. itself mentions that the representation and inducement was made by Ganesh. At some point, the present applicant was also present, but significantly, the amount which was taken from the informant has gone in the account of Ganesh. No amount has gone in the account of the present applicant. The applicant's role is much lesser.

Ganesh is absconding. The gold which is purportedly taken in the name of the present applicant is not purchased at the behest of the present applicant.

8. Learned counsel for the applicant submitted that, there is nothing to show that the present applicant had taken any part in purchasing gold. The main accused Ganesh was using his name. In any case, the gold was worth Rs.7 lakhs. The major amount was with the main accused Ganesh. At this stage, there is nothing to show that the gold was handed over by Ganesh to the present applicant. It appears that, Ganesh has extracted the money from the informant's company and has utilized it for various purposes. He is not available. But for the act of his son, the applicant cannot be subjected to the custodial interrogation, particularly, when he is a 72 year old man. The F.I.R. does not show any specific inducement made by the present applicant. In this view of the matter, it would be sufficient if the applicant attends the concerned police station and co-operates with the investigation.

9. Hence, the following order :

O R D E R

i) In the event of his arrest in connection with C.R.No.482 of 2023 registered at Warje Police Station, Pune city, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

ii) The Applicant shall attend the concerned Police Station from 04/03/2024 to 07/03/2024 between 1.00p.m. to 5.00p.m. and thereafter as and when called and shall cooperate with the investigation.

iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)