IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1243 OF 2024

Kalpesh Kumar Mahendrabhai Patel .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Khushil Shah, for the applicant.
Ms. Poonam P. Bhosale , APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE : 6th MAY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R No. 416 of 2023 registered at Vikhroli Police Station, Mumbai, on 26/08/2023 under Sections 406 and 420 of the Indian Penal Code.

2. Heard Mr. Khushil Shah, learned counsel for the Applicant and Ms. Poonam Bhosale, learned APP for the Respondent-State.

3. The FIR is lodged by one Sunil Yewala. He has stated that he has retired from his services in BMC. Since about 5 years he was trading in the share market. In June 2022, he received a phone call from an unknown number. The caller told him that he would give him tips as to where he should trade in the share market to earn money. Initially, the informant showed reluctance but afterwards he followed the tips and invested his money accordingly. Initially, he earned some profit for trading in small amounts. After that the caller told him that he should trade in bigger amounts. At that time, the informant told him that he was trading in smaller amounts and the SEBI rules were against such use of higher amounts. At that time, the caller told him that the present Applicant had a private broking company at Himmat Nagar, Gujarat. The informant could open trading account in that company and he could trade in higher amounts. On 24/06/2022, the Applicant called the informant and repeated this suggestion. Based on this assurance, the informant started sending the money to the Applicant. Initially to gain the trust of the informant, the Applicant returned Rs. 50,000/- as profit but thereafter did not

send any money and claimed that the the informant's investment suffered heavy loss. The Applicant was telling the informant to trade in Nifti, Gold, Silver, Oil etc. According to the informant, he paid Rs. 28,63,000/- to the Applicant and it was not utilised genuinely by the Applicant and had misappropriated his money.

4. Learned counsel for the Applicant submitted that all these amounts sent by the informant were utilised strictly as per the instructions of the informant. Therefore, the Applicant had not made any false inducement and had not misappropriated any amount. The money was lost in trading which was the very nature of the business in which the informant had willingly participated.

5. Learned APP strongly opposed these submissions. She submitted that the investigation has revealed that the said amount sent by the informant was received by the Applicant in his bank account but thereafter it was no utilised for the purpose of trading in the name of the present Applicant but it was misappropriated for the Applicant's own use. Thus, it is a clear case of cheating and

misappropriation of funds. She further submitted that the entire business of the present Applicant is illegal. There would be many such victims like the informant.

6. I have considered these submissions. As per the investigation carried out so far, the amount sent by the informant was misappropriated by the Applicant. It was not utilised for the purpose of trading as claimed by the Applicant. The Applicant was not available and was changing his residence and mobile phone as mentioned in the police Report. The same is taken on record and marked as “X” for identification. Apart from the misappropriation of the amount of the first informant, the very nature of the Applicant’s business is illegal. This requires thorough investigation as submitted by learned APP. For that purpose, the Applicant’s custodial interrogation is necessary. The informant may not be the only such victim. The nature of the Applicant’s business shows that there may be many other victims, which can be found out only after the custodial interrogation of the Applicant. The modus operandi also seems to be clear enough. The persons like the

informant are contacted through telephone. They initially provide such tips to gain their trust and thereafter they are duped financially. All this requires custodial interrogation of the Applicant. No case for grant of relief under section 438 of Cr.P.C. The Application is rejected.

(SARANG V. KOTWAL, J.)