IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2027 OF 2023

Saurabh Vinay Warty
Aged : 34 Years, Occu. : Service,
Residing at : 37, Suyash C.H.S.,
Saraswati Baug, Jogeshwari East,
Mumbai : 400 060. ...Applicant

vs.

The State of Maharashtra
At the instance of Senior Inspector
of Police, Dombivili Police Station
(Vide C.R. No. 193 of 2023). ...Respondent

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Mr.Sudeep Pasbola a/w Mr.Sankalp Vichare, Mr.Yuvraj Tidke i/b. Mr.Ayush Pasbola:-	Advocates for Applicant.
Mr.H.J.Dedhia:-	APP for Respondent -State.
Mr.I.V.Kokare – API:-	Dombivili Police Station.

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CORAM : S. M. MODAK, J.

DATE : 17th APRIL 2024

P. C. :-

1. Heard learned Advocate Shri.Pasbola for the Applicant and learned APP.

2. It is true that this Court has granted an interim protection as per

the order dated 26th July 2023. There is an offence registered at Dombivili Police Station on 1st June 2023 at C.R. No. 193 of 2023 under Sections 406, 420 of the Indian Penal Code, 1860 ("IPC") and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act"). In all, there are 5 named Accused persons. Accused No.1 – Vinay Warti is father of the present Applicant. The First-Informant is one of the investors who was lured to invest the amount by giving assurances of doubling the amount of investment within one (1) year. He has invested the amount from his Bank account and of family members. The total amount invested is Rs.60,50,000/- (Rupees Sixty Lakh Fifty Thousand Only). The Accused No.1 – Vinay used to run the business of dealing in securities in the name and style as Unique Consultancy. Those assurances could not be materialised and that is why, the FIR is filed.

3. Now, the investigation is over and charge-sheet is filed including additional charge-sheet. When the interim protection was granted, a submission was made on behalf of the Prosecution that the Applicant is recipient of an amount at least Rs.**30,00,000/-** (Rupees Thirty Lakh

Only). <u>This amount is transferred from the Bank account of Unique Consultancy to various Bank accounts standing in the name of present Applicant</u>.

4. This Court considered the submission that the Applicant was nowhere involved in interaction with the First-Informant and considered the submission that the Applicant has made an attempt to repay the amount due to the investors. The Applicant was asked to furnish an undertaking.

5. The Applicant has also furnished an undertaking thereby showing his willingness to deposit Rs.3,00,000/- (Rupees Three Lakh Only) immediately and Rs.7,00,000/- (Rupees Seven Lakh Only) within a period of two (2) months. <u>Those amounts are already deposited in the Office of this Court.</u>

6. It is true that the charge-sheet consists of various papers and it is in volumes. For the purpose of convenience, learned Advocate Shri.Pasbola has tendered two tables. <u>They are as follows</u>:-

(a) The amount transferred in three (3) Savings Bank accounts of the Applicant from the Bank account of Unique Consultancy. It is taken on record and marked as **Annexure-X**. <u>There are three</u>

(3) Bank accounts. They are:-

(i) Bank of India

(ii) NKGS Bank

(iii) HDFC Bank.

The amount credited to these accounts comes to Rs.31,50,000/- (Rupees Thirty One Lakh Fifty Thousand Only). According to Mr.Pasbola, this is on the basis of the papers collected during investigation and it is part of charge-sheet. Even, learned APP accepts this position.

(b) A chart showing the amount transferred from HDFC Bank of this Applicant to Sharekhan account. The money transferred is Rs.20,77,000/- (Rupees Twenty Lakh Seventy Seven Thousand Only). **It is marked as Annexure-X1.**

7. Mr.Pasbola gave following bifurcation:-

(a) Rs.20,77,000/- is already transferred to Sharekhan account and even though it is standing in the name of the Applicant, he was not operating that account and it is not the contention of the Prosecution that the Applicant is beneficiary of any amount from that account.

(b) If this amount of Rs.20,77,000/- is deducted from amount of Rs.31,50,000/-, the remaining amount comes almost Rs.10,00,000/- (Rupees Ten Lakh Only) and this is already deposited by the Applicant in the Office of this Court.

8. He invited my attention to the statement of one witness by name Rajesh Thuse dated 22nd August 2023. With the assistance of both the sides, I have read it. He has explained following facts:-

(a) He was interested to know the functioning of share market. He got acquainted with Vinay – father of this Applicant since January-2019.

(b) The witness used to assist Accused No.1 – Vinay and he was paid Rs.10,000/- (Rupees Ten Thousand Only) per month.

(c) The witness was permitted to do trading by accessing Sharekhan.com site and by using login id and password standing in the name of present Applicant.

(d) The witness is aware about the transfer of the amount by Accused Vinay Warty in the name of the present Applicant.

9. After going through the statement of the Demat account of the Applicant, the witness had given the details of the amount debited and the amount credited in that account. It is almost rupees One crore on both the sides.

10. The contention of Mr.Pasbola is it is nowhere the case of the Prosecution that the Applicant at any time interacted with the investors. According to him, except these two types of transfers (from Unique Consultancy to his Savings accounts and from Savings account

to Sharekhan account), there are no other financial transactions. According to him, even the Applicant has repaid few of the loan amount and incurred medical expenses on account of his father. He invited my attention to those relevant documents from Page No.16 onwards. He submitted that let the son may not be denied the reliefs, if his father has committed an offence.

11. Learned APP submitted that during investigation, it is disclosed that the investors have invested the amount more than Rs.10,00,000,00/- (Rupees Ten Crore Only) and at least, the Applicant be asked to deposit at least Rs.31,00,000/- (Rupees Thirty One Lakh Only). He submitted that he allowed the witness to use his password of Sharekhan account and that is why, how he is a privy to the act of misappropriation of the money of the investors.

12. When, it is not the case of the Prosecution that the Applicant has interacted with the investors and at the most, case against the Applicant is recipient of part of the misappropriated amount, I think, the interim protection needs to be confirmed. It is for the reason that Rs.10,00,000/- is already deposited by him. It is also for the reason that even though Sharekhan standing in his name, no material is pointed

out to show that he is a beneficiary of any amount.

13. It is true that charge-sheet is bulky, and it is difficult for this Court to go through each and every paper. So, this order is passed only on the basis of relevant documents pointed out during arguments.

14. In view of that, following order is passed:-

O R D E R

(i) The interim order passed on 26th July 2023 is confirmed.

(ii) If the bail is not furnished, let bail be furnished.

(iii) The Applicant to co-operate the Police as and when required.

(iv) Applicant not to threaten the Prosecution witnesses.

(v) The Competent Authority as per the MPID Act is at liberty to pass necessary orders about the amount of Rs.10,00,000/- (Rupees Ten Lakh Only) deposited in this Court once the Police will take appropriate steps.

(vi) At the request of learned APP and as consented by learned Advocate Shri.Pasbola, let Office to transfer this amount of Rs.10,00,000/- (Rupees Ten Lakh Only) to the Court of Additional Sessions Judge – Kalyan (Special Case No.354 of 2023) and to pass necessary order.

(vii) After transfer, the amount be deposited as per the Rules till the time further order is passed.

15. In view of the above, this Application is disposed of.

[S. M. MODAK, J.]