IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 901 OF 2024

Sagar Bapuso Nichite	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Vaibhav V. Ugle, i/b. Mr. Rajesh Katore for applicant.

Mr. Balraj B. Kulkarni, APP for respondent-State.

Mr. S. R. Ghanawat, i/b. Mr. Vikas Kolkar for intervenor/complainant.

CORAM : MANISH PITALE, J.
DATE : 18th NOVEMBER, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. In this application, the applicant is apprehending arrest in connection with FIR No.0003 of 2024 dated 13.01.2024, registered at Deccan Police Station, District Pune City, for offences under Sections 406 and 420 of the Indian Penal Code, 1860 (IPC).

3. Initially, on 19.04.2024, this Court (Coram: Sarang V. Kotwal, J) granted interim protection to the applicant for a limited period till 26.04.2024, on a voluntary statement made by the applicant that he would deposit an amount of ₹ 20 lakhs.

4. On 26.04.2024, the said order of interim protection was not extended, as the applicant failed to deposit the amount and he sought adjournment.

5. Thereafter, this application was adjourned from time to time and it has come up for hearing today. The learned counsel for the applicant was heard on merits.

6. It is submitted on behalf of the applicant that an amount of ₹ 25 lakhs was received by the applicant from the husband of the informant for investment in share market. Initially, an amount of ₹ 5 lakhs was returned to her husband. But subsequently, amounts were not returned and 3 cheques issued by the applicant, were dishonoured. It was submitted that proceedings under Section 138 of the Negotiable Instruments Act, 1881 have been already instituted on the ground of dishonour of said cheques. It was submitted that since the aggrieved person is already pursuing remedy under the provisions of the aforesaid Act, for the same cause of action, criminal prosecution in pursuance of the aforesaid FIR, cannot be continued.

7. The learned APP opposed the aforesaid contention and he further informed this Court that the applicant has criminal antecedents, as there are two earlier FIRs registered against him at Dehu Road Police Station, Pune and Goregaon West Police Station, Mumbai, for identical offences under Sections 406 and 420 of the IPC.

8. This Court has considered the statement of the informant leading to registration of FIR. Specific allegation is made that amount of ₹ 25 lakhs was taken from the husband of the informant on a promise made by the applicant to invest the same in share market for appropriate returns. Although initially, amount of ₹ 5 lakhs was returned, thereafter, the applicant failed to live up to his promise and even the 3 cheques of ₹ 15 lakhs, ₹ 10 lakhs and ₹ 10

lakhs, were dishonoured. It is found in such cases that initially, amounts are returned, so as to gain the confidence of the innocent investor and thereafter, the investor is duped.

9. The contention raised on behalf of the applicant that since proceedings under the provisions of the aforesaid Act for dishonour of cheques, have been instituted, prosecution in pursuance of the present FIR cannot be continued, is stated only to be rejected. In the present case, the statement of the informant does *prima facie* make out the basic ingredients of the offence of dishonest intention of the applicant from the inception.

10. The applicant is also found to have criminal antecedents and for this reason also, this Court is not inclined to exercise its discretion.

11. The application is dismissed.

(MANISH PITALE, J)

Priya Kambli