IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 68 OF 2023

Sunil Mohan Sarode ...Applicant
vs.
The State of Maharashtra ...Respondents

ALONGWITH
INTERIM APPLICATION NO. 1173 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 68 OF 2023

Digambar Patil and Anr. ...Applicants
vs.
The State of Maharashtra and Anr. ...Respondents

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Mr. Wesley Menezes a/w Mr. Steven Anthony, Ms. Trupti Kudtudkar, Mr. Ruben M., Mr. Ayaan Bhattacharyya i/by Mr. Waqar Pathan	Advocate for Applicant in ABA 68 of 2023
Mr. Siddhesh Bhole a/w Ms. Anushree Koparkar i/by SSB Legal and Advisory	Advocate for the Applicant in IA 1173 of 2024
Mr. Ashok S. Gawai	APP for Respondent-State
M. Jahangir Ali Sayed	EOW Thane City Present

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CORAM : S. M. MODAK, J.

DATE : 19th DECEMBER 2024

<u>P. C.</u> :-

1. I have heard learned Advocate Shri Menezes for the Applicant and learned advocate Shri Bhole for the first informant and learned APP at a great length.

2. Interim application No. 1173 of 2024 is filed for the intervention. I have heard learned Advocate for the Intervenor. It is allowed. Accordingly, interim application is disposed of.

3. The issue involved is whether to confirm ad-interim protection granted by this Court on 12th January 2023 or whether to vacate it. This was granted on 12th January 2023 (Coram: M.S. Karnik, J.) Initially, when I dealing with this assignment, this application had also come before me. After change of the assignment surprisingly, neither the accused nor the prosecution have taken steps for early disposal of this application. Finally, when bail application No. 691 of 2024 was placed before me on 11th October 2024, it was brought to my notice that this anticipatory bail application is pending. Liberty was granted to the parties to seek circulation. That is why this Anticipatory Bail Application is again placed before me.

4. Learned advocate Shri Menezes has also invited my attention to the order dated 13th August 2024 (Coram: R. N. Laddha, J.) observing to place this Anticipatory Bail Application before me.

5. Learner advocate Shri Menezes has also argued this matter on various dates. Even learned APP with all force has opposed to grant continuation of anticipatory bail. That is why this Court has directed the prosecution to file an affidavit on 13th December 2024. It is filed. Accordingly, today I have heard learned APP and learned Advocate Shri Menezes. Learned Advocate Shri Bhole has already argued the matter.

6. The prosecution case in nutshell is as follows:-

(a) On the complaint of one Rajendra Daund, who is one of the investor, the Kolsewadi Police Station have registered an offence against the present applicant-Sunil Sarode and Manisha Sarode. It is under Sections 420, 406, 409 read with 34 and under Sections 3, 4 and 5 of the Maharashtra Protection of Interest of Depositors Act dated 26th November 2020. Subsequently, the investigation was transferred to the Economic Offences Wing.

(b) The sum and substance of the allegation in the FIR is, 'Applicant and his wife have lured people to invest money in Ultra Life Care

Private Limited. Investment was made in other companies also. That is described in F.I.R. on page number 35. The total amount they have invested is Rs. 9 lakhs. He has also given all the details of amounts invested by other investors. The total amount invested comes to Rs. 1,08,000,025/-, page no. 43. When the charge-sheet was filed. The total amount of investment had gone up to Rs.16,23,40,000/-. The number of investors is 105.

(c) The present Applicant either directly or through middle man has paid the investors for certain duration. The Applicant has fulfilled his promises. However, after certain passage of time he could not fulfil it. The investors have realised that they were made false promises and that is why complaint was lodged.

7. Initially, this Applicant approached before the court of additional Sessions Judge, Kalyan for anticipatory bill. It was withdrawn. It is on page no. 586 of Anticipatory Bail Applicatioin dated 22nd August 2022.

8. <u>There is strong opposition by learned APP and learned advocate Shri Bhole for the maintainability of the present application</u>. It is for the reason unless there is change in the circumstances, fresh anticipatory bail is not maintainable. Learned advocate Shri Bhole also relied upon certain judgements. They are as follows:-

(i) ***Bhisham Singh Vs. State of Haryana*** passed by the High Court of Punjab and Haryana at Chandigarh, dated 09.04.2024, specifically para no. 7, the High Court of Punjab and Haryana have considered the observations in various judgment on this aspect. Finally in para number 11, certain principals are laid down. Though the second anticipatory bail application is maintainable on the ground of withdrawal, **it can be entertained only when there is a substantial change in the circumstances** and superficial or ostensible change would not suffice.(para number 11-III).

(ii) ***Shibram Bhowmik and Anr. Vs. State of West Bengal***[1]. The application filed by father-in-law for anticipatory bail is dismissed as not pressed. (para no. 3). In para number 18, it is observed, "*withdrawal of a petition seeking pre-arrest bail without leave to apply afresh having been first obtained is likely to result in an estoppel. From our experience we have found that applications are withdrawn for many reasons including when a*

1 2011 SCC Online Cal 1403

favourable order is not likely to be passed by the Bench taking applications under Section 438 of the Code or when the Petitioner wants to take a chance before the Sessions Court and such other strategic reasons which it is not possible to exhaustively tabulate. There can be no denial of the fact that this practice cannot be encouraged on the specious plea that an application for pre-arrest bail is an interlocutory matter. There may also be cases as in the present case where the application was not pressed because the learned Advocate was of the view that all the evidence which he could have relied upon was not before the Court. But in such a case he should have taken leave of the Court to apply afresh before having his application dismissed as not pressed".

(iii) ***Rani Dudeja Vs. State of Haryana***[2] second bail petition was rejected because earlier petition has been withdrawn.

9. Learned advocate Shri Menezes has made following submissions:-

(i) No doubt while withdrawing, liberty was not sought, it does not estopps the Applicant to apply before this court. The reason is

2 2017 (13) SCC 555

jurisdiction of the Session court and High Court are co-extensive. This Court is not sitting in an appeal. The parameters laid down in above judgements will be applicable only if the Applicant will approach again to the court of the Additional Session Judge, Kalyan.

10. This Court has heard this Anticipatory bail application on several occasions and granted ad-interim protection, and continued it, and it is pending since 2023. So if this application is dismissed on this preliminary objection, it will amount to denial of justice. It is very well true that earlier bail application can be withdrawn for several reasons. One of them is presiding Judge is not willing to grant bail. Many times learning Advocates are withdrawing the application instead of inviting the observations of the court. I do not think that the applicant can be esstopped from approaching to this Court in the set of above facts. The reason is two courts are different. Even though both courts are having simultaneous jurisdiction still in hierarchy of the Court, the High Court stands on a higher pedestal than the District Court. So I am inclined to decide this application on merits.

11. According to learned APP and learned Advocate Mr Bhole, this

Court should not confirm the ad-interim protection for following reasons:-

(a) The allegations are serious and in as much as 700 investors were duped and the total amount of misaappropriation comes to Rs. 16,23,40,000/-. More and more investors are coming forward.

(b) Huge amount is involved and the Applicant is not having respect towards the law.

(c) He has not co-operated the investigation.

12. According to learned Advocate Mr. Bhole, the investors have invested their hardened money and they were cheated.

13. Learned APP Mr Gavai has tried to make out the case for custodial interrogation on the following grounds:-

(i) The applicant has forwarded certain receipt books by post. Yet all are not recovered. It is affirmed in the affidavit and one of such letter dated 10th October 2023, written by IO to the Applicant on page no. 600. It is brought to my notice. The description of four books which are produced is given. **Whereas yet six books are to be recovered**.

(ii) Even he invited my attention to the copy of certain receipts annexed to the charge sheet, having signature of the Applicant, the amount of 16,23,40,000/- is arrived on the basis of statement of Dineshan K. P.. He was an employee working with applicant. His statement is on page no. 271 dated 8th April 2022.

(iii) Learned APP also invited my attention to the list of investors, on page no. 78 to page no. 97, the names are divided into five parts. Total of this investment is Rs. 16,23,40,000/- mentioned at the bottom of table, page no. 97.

(iv) Learned APP also submitted that yet IO has to unearth the property purchased if any by the Applicant. Hence custodial interrogation is required.

(v) Though learned Advocate Mr. Menezes has tried to point out lack of clarity of the investigation about exact number of investors and the amount, learned APP has explained the total number of investors 105 in the summary of chargesheet, on page no. 66. It is due to mistake and this 105 number is mentioned only from the part-V from the page no. 95 to page no. 97, the total comes to 105. According to him, in fact, the case of the prosecution for misappropriation of huge amount is supported by interim forensic report. My attention is invited to the summary of the amount deposited in four bank accounts from the charge-sheet papers. They are with Dena Bank, ICICI Bank, Kotak Mahendra Bank and State Bank of India, The entities are different. It gives following details:-

(i) payment made for Rs. 21,21,36,633.92/-,

(ii) Receipt is Rs. 21,21,72,640.66/-.

Yet final forensic report is not received.

(vi) It is also required whether any other associates of the Applicant are there.

(vii) After grant of ad-interim protection, though the Applicant has attended, he has not co-operated in the investigation. He invited my attention to the averment in the affidavit on page no. 587. The details are as follows:-

(i) The first informant-Rajendra Daund as an employee of private company. Whereas his wife is working in a Police department.

(ii) One Rupali Birari is a friend and she also works in Police department. They were introduced to Satish Patil who works in Mantralaya.

(iii) The first informant-Rajendra got call from Satish Patil informing about the business carried out by this Applicant and his wife in different names and its investment business. One meeting was organised on 25th January 2017. All of them are accused.

(iv) The applicant-Sunil introduced himself as a Director of various companies mentioned on page no. 590.

(v) He has explained the investment plans and returns. It is reiterated that there are 780 investors and total amount of misappropriation comes to Rs. 16,23,40,000/-.

(vi) One Shinde and Associates is appointed as an auditor. It reveals Rs. 21,21,72,640.66/- is deposited in the five bank accounts.

(vii) It further mentions the property details of the applicant situated at Nashik and the valuation is Rs. 1,15,50,492/- which is much less than the amount misappropriated. It is not made clear whether steps are taken to attach the said property as per the provisions of the MPID Act.

(viii) The applicant misrepresented to investors about holding 10 acres of land in Ratnagiri. Yet the details are awaited from the Government authorities at Ratnagiri.

(ix) It further mentions the applicant is member of Mauli Multi-cooperative Credit Society and he has published pamphlets to luring investors to invest in the said society.

(x) As per the statement of Dineshan K. P. certain receipt books are yet to be recovered from the applicant.

14. As against this learned advocate Shri Menezes in support of the confirmation has made following submissions:

(i) The applicant has attended the office of EOW for more than 20 times and gave all sorts of co-operation which he can give.

(ii) Yet prosecution is not sure about total amount of misappropriation. He laid emphasis on amount mentioned in the charge-sheet against him on page no. 66 is Rs.16,23,40,000/- on one hand and on the other hand, the amount mentioned in the charge-sheet submitted against the applicant-Vishwajit page no 85. This is from the bail application of Applicant-Vishwajit. The amount mentioned at two places is as follows:

(a) At one place, it is Rs. 16,23,40,000/-.

(b) and second at the bottom, it is Rs. 5,62,03,025/- for 175 investors.

(iii) He has also criticised the conduct of investigating agency is not making Dineshan K. P. as an accused.

(iv) He read the following statements:-

(a) First statement of one Durga Rajendra Daund, who is wife of the first informant, dated 29th January 2021, on page no. 232. She has explained how they got receipts bearing signature of this applicant.

Learned Advocate Shri Menezes, that is why tried to explain the remaining receipt books are not with his client, but they are with Satish Patil and K.P. Dineshan who are working as commission agents also.

(v) He has also invited my attention to the reply dated 11th November 2024, addressed to the investigating officer and para no. 13, page no. 99 and also to reply dated 2nd September 2024, on page no. 2 and on page no. 8 and 9, he has explained that the receipt books which are to be seized from the possession of Satish Patil and K.P. Dineshan. This is part of the compilation produced today.

(vi) According to him, as per the provisions of Section 3 of the MPID Act, the said Patil and K. P. Dineshan are also culprits, but they are protected by the Police.

(vii) From the statement of K.P. Dineshan on page no. 273, learned Advocate Shri Menezes tried to explain that Mr. K. P. Dineshan also worked as commission agent and he was paid with the commission, it is for arranging investment from 16 persons. It is mentioned in the chart, on page number 273.

15. According to learned Advocate Mr. Bhole, this is serious offence involving misappropriation of crores of amount and no case for confirmation is made out. Alternatively, he submitted that applicant may be directed to deposit remaining amount of Rs. 14,00,00,000/-.

16. It is true on behalf of the applicant, learned advocate Shri Menezes has communicated the offer to deposit certain amount, it was communicated to IO as well as to learned advocate for the first informant. It is on affidavit.

17. While considering the issue of the confirmation, this Court has only to take into account the opportunity to the prosecution to have custodial interrogation and the grounds for custodial interrogation. The grounds are seizure of remaining books and recovery of the huge amount. It is true that the amount of misappropriation is huge. The Police are in the process of ascertaining exact amount of misappropriation. The amount of Rs. 16,23,40,000/- is on the basis of information given by K.P.Dineshan. <u>It is true it is having some authenticity, because he was working with the applicant</u>. Still the investigating agnecy is required to verify this fact by ascertianing from the investors. <u>The statement of 780 investors are not yet recorded.</u> It is difficult task. Some of the investors may be available and some of them may not even come forward. The amount of Rs. 5,62,03,025/- mentioned in the supplementary charge-sheet against the applicant-Vishwajit maybe on the basis of confirmation of the documents. <u>It is true the amount of the misappropriation certainly is one of the factor so as to assess the seriousness of the offence.</u>

18. There is forensic interim report. It suggests more than 20 crores deposited in several banks accounts related to the applicant. Yet final report is not received. That is to say whether this amount is of investors or other.

19. Be that it may the Court is deciding the application on the basis of need for custodial interrogation and other grounds. So far as seizure of remaining receipts book is concerned, no doubt it is one of the piece of evidence to show the involvement of the applicant, because it must contain the details of the investors, the amount invested and the receipts having signature, other receipt books are produced by the applicant. There is normal tendency of the person-accused of an offence in not cooperating in producing materials which are against him. However, in this case few of the receipt books are produced by the accused himself. He has offered an explanation that they are with K.P. Dineshan and Patil. It is true after granting ad-interim protection, the Applicant has attended office of Economic Offence wing though not regularly, the investigating officer must have investigated him. They might not have received co-operation what they are expected, but by putting the condition that opportunity was made available.

20. This Court feels that add ad-intern protection can be confirmed.

The reason is yet there is no confirmation for huge amount of Rs. 16,23,43,000/- and if it is Rs. 5,62,03,025/-, the applicant has already deposited Rs. 2,00,00,000/- in this Court. The statements of few of the investors are recorded. Certain information is given by K.P. Dineshan.

21. So this Court feels that remaining investigation can be done without having custodial interrogation of the applicant. Hence this court is allowing the application.

22. When the applicant has submitted affidavit to the IO, this court believes that the applicant will abide to the commitments given in the affidavit. Even learning APP has pointed out various clauses from the application, showing the desire of the applicant to repay that amount. So Court is not overlooking that commitment, but Police can certainly act upon that on that affidavit. On the dates mentioned in the affidavit, applicant can deposit that amount before the court. If there is a failure, the police can be granted liberty to apply for cancellation of anticipatory bail. The amount of Rs. 2,00,00,000/- needs to be transferred to the Court seized of that case.

23. In view of that following order is passed:-

ORDER

(i) Anticipatory bail application is allowed.

(ii) In case of arrest in connection with C.R. No. I-669 of 2020 registered with Kolsewadi Police Station for the offences punishable under Sections 420, 406, 409 read with 34 of the Indian Penal Code and Sections 3, 4 and 5 of the Maharashtra Protection of Interest of Depositors Act 1999, the Applicant-Sunil be released on furnishing Personal Bond and Surety Bond in sum of Rs. 1,00,000/- (Rupees One Lakh only).

(iii) Applicant-Sunil is directed to give attendance to the office of Economic Offence Wing, Crime Branch, Thane on first Monday of months of January and June from 10.00 a.m. to 12.00 noon until completion of the trial.

(iv) Applicant shall not threaten the prosecution witnesses.

(v) The Applicant is directed to file an affidavit sent to the Investigating Officer before the Court of the Additional Sessions Judge, Kalyan within two weeks from today. The Trial Judge may take in on record.

(vi) In case of no adherence to the time limit of any of the installments mentioned therein, the investigating agency is at liberty to apply for cancellation of anticipatory bail granted by this Court.

(vii) Let the Registrar (Judicial-I) to transfer the amount of two Crores to the Court of Additional Sessions Judge, Kalyan. This amount be deposited in National Bank as per the Rules.

(viii) The prosecution is at liberty to make necessary application for seizure of this amount as per the provisions of the Maharashtra Protection of Interest of Depositors Act.

(ix) When the Applicant will deposit the amount before the Court of the Additional Sessions Judge, Kalyan as committed in the affidavit, the Court to deposit that amount in FDR, and similar liberty to the investigating agency to seize that amount in the said crime.

24. Accordingly, Anticipatory bail application is disposed of.

25. Interim Application is disposed of.

[S. M. MODAK, J.]