2024:BHC-NAG:493

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.1064 OF 2023

Vivek Sukhchand Mohane
Vs.
State of Maharashtra, Through the Investigating Officer, Police Station Gittikhadan
District Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Parvez W. Mirza, Advocate for applicant.
Mr. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/01/2024

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.765/2023 registered with Police Station Gittikhadan, District Nagpur for the offence punishable under Sections 406 and 420 of the Indian Penal Code. The applicant is arrested on 03.10.2023 and since then he is behind bar.

2. The accusation against the present applicant is on the basis of report lodged by Kiran Sujit Somkuwar wherein she has alleged that she is resident of Nagpur and present applicant was her neighbour. The applicant has induced her that he works in a Share Market and Mutual Fund and if she invest the amount, she will get good returns. The applicant had displayed the board on his house under the name 'EDELWEISS'. As the present applicant induced her, she has invested the amount of

Rs.5,00,000/- which is hard earned money as well as other persons have also invested the amount, they could not get returns and were duped to Rs.21,35,500/-. On the basis of said report, police have registered the crime.

3. It is contention of the learned Counsel for the applicant that applicant is registered as a Broker and having certificate issued by National Institute of Securities Markets as well as Securities and Exchange Board of India (SEBI). The informant and other investors have invested the amount subjected to the market risk. At the most, the act attributed against the present applicant that he has suggested them to invest the amount in the share market. Merely, because, he has suggested to them to invest the amount in the share market is not sufficient to charge him for the offence punishable under Section 420 of the Indian Penal Code. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. He further submitted that the offence alleged against the present applicant is punishable with imprisonment less than seven years and in view of the judgment of the Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51**, the compliance under Section 41A of Cr. P.C. was required which was not complied by the Investigating Officer. For all above these reasons, the applicant be released on bail.

4. Said application is strongly opposed by the State on the ground that with intention to dupe the informant and the other investors, the applicant has induced them to invest the money. The applicant is running Investment Consultancy by obtaining the Shop Act licence which was expired long back. The intention of the present applicant is revealed from the act committed by him, if he is released on bail, the investors and the informant would lose their hard earned money and prays for rejection of the application.

5. Having heard learned Counsel for the applicant and the learned APP for the State, perused the investigation papers. There is no dispute as to fact that present applicant is a certified Broker as National Institute of Securities Markets issued him a licence of Broker which is valid till September 2025. He is also registered with the SEBI and working as a Broker for the EDELWEISS. From the recitals of the FIR shows that the applicant who is working as a consultant asked the complainant and other investors to invest the amount, accordingly they have invested in the share and sustained loss. Though the recitals of the FIR are showing that the present applicant has induced them to invest the money but the informant and other investors have invested the amount in the share market and they are well aware about the risk of the share market. At this stage, whether they have only invested the amount on the inducement or at their own, which is a matter of

evidence. Admittedly, there is no compliance in view of the judgment of the Hon'ble Apex Court in **Satender Kumar Antil** (supra) by issuing the notice under Section 41A of Cr.P.C.. Investigation is already completed and charge-sheet is already filed. Further incarceration of the present applicant is not required. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Vivek Sukhchand Mohane** be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.765/2023 registered with Police Station Gittikhadan, District Nagpur for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(iv) The applicant shall furnish his cell phone number and address with the address proof.

(URMILA JOSHI-PHALKE, J.)

Sarkate