

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 703 OF 2015

Kishore Bhabhutmalji Shah. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Tanaya D. Goswami, advocate for Applicant.

Ms. Amreen Mansur i/b. Ajay Law Associates, advocate for
intervenor.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 15, 2015

P.C.:

1 Heard the learned Counsel for the applicant, the learned
Counsel for the intervenor and the learned APP for State. Perused
the papers.

2 This is an application under Section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is apprehending his arrest in
M.E.C.R. No. 9 of 2013 registered at Kalachowki Police Station on

12/12/2013 for offence punishable under Section 420 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the present applicant happens to be a good friend of the complainant. It is alleged that on 14/8/2012 the present applicant had been to the house of the complainant alongwith one Ms. Panchali S. Chakrawarty who claimed to be a producer of film 'Bandistan'. The present applicant had introduced Ms. Panchali Chakrawarty to the complainant and had informed the complainant that the original accused No. 1 Ms. Chakrawarty is in need of funds to complete the project. The present applicant had also assured the complainant that in the eventuality that she fails to pay the money, he would repay the amount. He had stood as a guarantor to the said transactions. The complainant had parted with Rs. One Crore in favour of Ms. Panchali Chakrawarty only on the basis of the assurance given by the present applicant. The amount was not returned within two months. The original accused No. 1 Ms. Panchali Chakrawarty had issued two cheques in favour of

the complainant. Both the cheques were dishonoured. She had also executed two promissory notes in favour of the complainant on 11/1/2013. At that stage also, she had given post-dated cheques which were dishonoured. The cheques were issued by M/s. Depth Entertainment Pvt. Ltd.

4 The present applicant had accompanied Ms. Panchali Chakrawarty to the house of the complainant and had given assurance that they would repay the amount. On 9/5/2013 the memorandum of settlement was executed between the parties. The present applicant was party to the said memorandum of understanding. However, the said MOU was never acted upon and finally, the complainant was constrained to file complaint before the Metropolitan Magistrate, Mazgaon. Learned Magistrate had issued directions under Section 156 (3) of the Code of Criminal Procedure, 1973.

5 The applicant has then filed an application seeking pre-arrest bail. On the last two occasions, this Court had enquired as to whether the applicant would like to explore the possibility of amicable settlement. The learned Counsel had taken time to take instructions to that effect. However, as on today, it is submitted that it is not possible for the applicant to either act upon the MOU or to fulfill the assurance given by him at the time of the money transaction.

6 The learned Counsel for the applicant submits that the complainant and the applicant happen to be good old friends and therefore, it is only a case of misunderstanding. As against this, the learned Counsel for the complainant submits that it was only because of friendly relations between the applicant and the complainant that the complainant has parted with Rs. One Crore in favour of Ms. Panchali Chakrawarty. Before the applicant had introduced her to the complainant, the complainant was not even aware of the existence of person namely Ms. Panchali Chakrawarty.

7 It is apparent on the face of the record that it is only the applicant who was aware that the complainant has sold his bungalow at Lonawala and has sufficient fund. The applicant had taken advantage of the friendly relations and had introduced him to Ms. Panchali Chakrawarty. That the original accused No. 1 Ms. Panchali Chakrawarty was arrested and has been subsequently enlarged on bail. While in police custody, she had disclosed the name of the people to whom she had made the payments. In any case, criminal prosecution cannot be treated as a recovery proceedings. There was an element of cheating at the very inception when the applicant stood as a guarantor for the said money transaction between the complainant and Ms. Panchali Chakrawarty and therefore, the applicant does not deserve grant of pre-arrest bail. The application being sans merits stands rejected.

8 At this stage, the learned Counsel for the applicant makes an oral prayer for staying the order for a period of two weeks. Taking

into consideration the facts of the case, the applicant does not deserve grant in extension of interim relief. Hence, oral prayer is rejected.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)