

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.812 OF 2015

Manasi Shirish Khedekar and Another	... Applicants
vs.	
The State of Maharashtra	... Respondent

Mr. Shailesh Chavan, for the Applicants.
Mrs. R.V. Newton, APP for Respondent – State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: JUNE 23, 2015

P.C.:

. The application is moved for pre arrest bail by the applicants/accused as they are facing charges for the offence punishable under Section 420 read with 34 of the Indian Penal Code in C.R. No. 146 of 2015 registered with Vishrambaug police station, Pune. One Meena Kulkarni has given the complaint against the principal accused Shirish Khedekar. The applicant/accused No. 1 is the wife and applicant/accused No. 2 is the daughter of Shirish.

2. It is the case of the prosecution that, the applicants/accused and the principal accused Shirish have their business of Tours and Travels.

They have given an advertisement in the newspaper for taking tours at various places and the people booked for the tours. However, they were not provided the facilities which were promised. The complainant Meena Kulkarni had booked for Nepal tour and paid money accordingly in the month of April, 2015. The promise was given to book a air ticket but due to earthquake in Nepal the tour was cancelled. Then she was asked to go to Dehradun and Nainital but the applicants/accused demanded for more amount. The total amount of Rs. 55,000/- was paid by the complainant. However, the complainant went to Delhi and other places but necessary facilities were not provided to her and she was also not given a return air ticket. The complainant had to pay the hotel bill at one place and she also had to purchase a return ticket.

3. The learned counsel for the applicants/accused has submitted that it is not a case of cheating because there was no such intention. It is the case which fall under the Consumer Act for the services not provided by the applicants/accused. It is further submitted for the applicants/accused that applicant No. 1 is the wife of principal accused and whatever is done by the principal accused Shirish and not by her. The applicant No. 2 is the daughter of the principal accused Shirish and she is a student and she has not committed any offence. In support of his submission, he relied

on two cases i.e. “*Hari Prasad Chamaria vs. Bishun Kumar Surekha and Others*”¹ and “*Chandrakant Uike vs. Rajesh Sharma and Another*”².

4. The learned prosecutor opposed the bail application. She has submitted that till today the investigating officer has recorded the statements of nearly 14 persons who were deceived by the principal accused Shirish and the applicants/accused for total amount of Rs. 7,21,106/-. She submitted that the role played by applicant/accused No. 1 is also disclosed in these statements. She actually received money and the amounts were deposited in her accounts. It is further submitted that accused had peculiar modus operandi to start their business with the advertisement in newspaper by changing the name of the Company such as *Prithvi Tours, Atharva Tours* etc. The another offence is registered against these persons at C.R. No. 132 of 2015 with Kothrud police station. Other persons also filed complaints against them in Consumer Court. The principal accused Shirish is not remained present before the Consumer Court and therefore, the said Court has issued non-bailable warrant against him. They want custody of the applicants/accused to find out how many persons were cheated by giving such advertisements.

1. (1973) 2 Supreme Court Cases 823.

2. 2006 CRI. L.J. 3828.

5. The present case definitely fall under the Consumer Act. However, in the present case, it appears *prima facie* that the principal accused Shirish and applicant accused No. 1 have changed the name of their travel company from time to time and gave advertisement for the tours. The behavior of the principal accused and applicant/accused No. 1 appears deceptive. It is not the only one case of the present complainant but there are 14 other persons have given the statements and one more complaint is registered at Kothrud police station, Pune.

6. In the case of Hari Prasad Chamaria, a challenge was given for the quashing of the complaint and the Hon'ble Supreme Court held that no case was made out against the Respondent under Section 420 of the Indian Penal Code. It was also a transport business and the amount was paid. However, the name of the Respondent was not shown as the proprietor of the said business and the Respondent failed to refund the amount. Hence, the Hon'ble Supreme Court held that no offence under Section 420 of the Indian Penal Code is made and the complaint was quashed. In the present case it is a anticipatory bail application with the isolated facts and circumstances. In the case of Chandrakant Uike, there was an agreement of purchase of vehicle between the parties and there was no dishonest intention in the mind of either of the parties at the initial stage and

therefore it can not be considered as cheating but only breach of contract and there is a civil cause of action. Both the cases will not be applicable to the present set of facts because in the present case, it is not a single incident but there are different instances of similar nature against the applicants/accused and also the change of the name of the company.

7. Therefore, *prima facie* I am not inclined to grant pre arrest bail to the applicant/accused No. 1. However, I do not find any involvement of applicant/accused No. 2 who is the daughter of the principal accused and a student.

8. Hence, I pass the following order:

- a) The interim pre arrest bail granted to applicant/accused No. 2 Kum. Sonashree Shirish Khedekar is hereby confirmed with the same terms and conditions;
- b) The application for pre arrest bail to applicant/accused No. 1 Manasi Shirish Khedekar is rejected.

(MRS.MRIDULA BHATKAR, J.)