

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.969 OF 2015

Abdul Rehman Hussain Miya Patel

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Shine Kamaluddin Mohammad for the Applicant

Ms.Veera Shinde, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 24, 2015**

P.C.:

1. The application is moved for pre-arrest bail as the applicant/accused is apprehending arrest in C.R. No.I-10 of 2015 registered by the Taloja police station under sections 406, 420 r/w section 34 of the Indian Penal Code. The offence is registered on 20.1.2015 at his instance only. This applicant/accused Abdul Rehman Hussain Miya Patel is having a business of scrap material. The co-accused Shiv Kumar Gupta is having a shop of repairs of old Air Conditioners and Refrigerators. They had some transactions earlier and according to Abdul Rehman, the applicant/accused Shivkumar Gupta owed him Rs.5 lacs. Thereafter in the month of October, 2014, Shivkumar Gupta told him that some scrap material of boiler tank in one company at Khopoli can be obtained and for purchasing the scrap material, Shivkumar Gupta told that him in the said

company an amount of Rs.57 lacs was to be deposited and then only, the company will hand over the material. Therefore, the applicant/accused, who is the complainant also, handed over cash of Rs.52 lacs to Shiv Kumar Gupta. The amount was given in cash except one cheque of Rs.5 lacs drawn on IDBI bank. There is a confusion as to whether it is included in the amount of Rs.57 lacs or not. As per the complaint, the amount of Rs.57 lacs was given. It is the case of the applicant/accused that a video shooting was done of the payment of the cash amount of Rs.15 lacs which was given on 24.11.2014. However, Shivkumar Gupta did not take him to the company to buy boilers. Thereafter, Shivkumar disappeared and avoided the complainant and thereafter he was absconding. So, the complaint was given to the police against Shivkumar Gupta and one Atiq, pursuant to which the investigation was carried out and the police subsequently found that the complainant himself is a beneficiary of the said amount and he alongwith Shivkumar Gupta had hatched a conspiracy to cheat Huzefa Patel. After recording the statement of Huzefa Patel, the Investigating Officer found that Shivkumar had received this money from the applicant/accused, which was subsequently returned to the applicant/accused.

2. As per the case of the applicant/accused, he gave cash of Rs.12,60,000/- to Shivkumar out of Rs.52 lacs and Huzefa Patel who is his partner gave Rs.38,90,000/-. Everything was paid in cash. Huzefa

Patel paid money of Rs.38,90,000/- directly to Shivkumar in the presence of Abdul Rehman at the instance of the applicant/accused. Therefore, after revealing these facts, the Investigating Officer made the complainant as an accused in this case and the aggrieved party in the present case is Huzefa Patel, who claimed to be cheated of Rs.38,90,000/-.

3. The learned Counsel for the applicant/accused submitted that the applicant is in fact the complainant and he is falsely implicated in this case. He submitted that if at all, he is made an accused and his position is transposed from complainant to accused, it is only on the basis of the confessional statement made by Shivkumar Gupta before the learned Magistrate. He submitted that if at all the applicant/accused would have been involved in the crime and he would have accepted money at his instance, then Shivkumar Gupta should have disclosed the name of the applicant/accused immediately after his arrest i.e., on 30.1.2015 which was the complaint of the applicant/accused. The applicant/accused gave his complaint on 20.1.2015. The incident has taken place in October, 2014. The learned Counsel submitted that in fact there are entries that the applicant/accused has paid money of Rs.5 lacs to Shivkumar. He submitted that he is falsely implicated and he is to be protected by pre-arrest bail.

4. Learned Prosecutor has opposed the application. She relied on the photocopy of the statement of Shivkumar Gupta, recorded under section 164 of the Criminal Procedure Code. She submitted that the custody of the applicant/accused is necessary. She also relied on the observations made by the learned Sessions Judge while passing the order of rejection of the anticipatory bail application.

5. Perused the FIR, the documents relied on by both the parties so also the statement of Shivkumar Gupta, recorded under section 164 of the Criminal Procedure Code. It appears that the transaction between the applicant/accused and the co-accused was a part of an agreed transaction against one Hujefa Patel and prima facie, it appears that Hujefa Patel is a co-partner of the applicant and was cheated to the tune of Rs.38,90,000/-. In my view, therefore, custodial interrogation of the applicant/accused is required.

6. Hence, the application is rejected.

7. The photocopy of the statement of Shivkumar Gupta recorded under section 164 of the Criminal Procedure Code, is taken on record. It is to be sealed and kept in the custody of the Registrar (Judicial).

(MRS.MRIDULA BHATKAR, J.)