

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1331 OF 2014

Chandrakant Amrutrao Shelar. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Kuldeep U. Nikam, advocate for Applicant.

Mr. J.H. Ramugade, APP for State.

PSI D.S. Patil, Shivaji Nagar Police Station, Pune.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JANUARY 5, 2015

P.C.:

1 Heard the learned Counsel for the applicant 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 Crime No. 174 of 2014 registered at Shivaji Nagar Police Station for offence punishable under Section 420, 406, 504 read with Section 34 of the Indian Penal Code on 12/9/2014.

3 It is the case of the prosecution that on 12/9/2014 Gaurav Sunil Khot, who was working as Assistant Manager of Shreya Equipment Finance Private Limited Company lodged a report at the police station alleging therein that one Shamrao Eknath Shelke, resident of Pune had purchased pock-land machine and rock beaker from the said company. He had informed the company that he is a private contractor and runs a proprietary firm in the name of Kalasagar Enterprises. The company sanctioned loan of Rs. 61,54,500/- to Shamrao Shelke for purchasing the machine. An hire purchase agreement was executed between Shamrao Shelke and the company. It was agreed that till the entire loan amount is reaslied, Mr. Shelke would not create any third party interest. Mr. Shelke had agreed to

the same. From December 2012 Mr. Shelke was not paying the installments regularly. The guarantor Mr. Lagad was also not accepting the liability. The company had sent reminder notice on various occasions.

4 In January, 2013, the complainant had actually gone to the spot to conduct physical verification of the machine and at that time they found that the machine was not with Mr. Shelke. The company was informed by Mr. Shelke that the vehicle/machine was sold to the present applicant by executing an agreement. Thereafter, the representative of the company had been to the house of the present applicant and had found that the machine was parked in front of the house of the present applicant. Mr. Shelke as well as the present applicant had given copies of the agreement to the representative of the company. The company was therefore, constrained to lodge a report against Mr. Shelke, guarantor Mr. Lagad and the present applicant.

5 During the pendency of this application, initially, the applicant has been granted interim relief by this Court. Investigating Officer is present in the court. He has filed an affidavit before this Court and in the said affidavit, it is stated that on 18/6/2014 Mr. Shamaraao Shelke has provided a letter to the said company whereby he had admitted that the said machine is in the custody of the present applicant. In fact, this issue was clear from the recitals of the FIR itself. It is further submitted by way of an affidavit that the present applicant had declined to show the machine to the representative of the company and that he had told the representative to forget about the machine and that he has not produced the same till 18/11/2014. According to the Investigating Officer, at that stage machine was concealed by the present applicant and therefore, he was insisting upon custody of the present applicant.

6 Today, the Investigating Officer is present before the court and had made a categorical statement that the machine is with Mr. Shamraao Shelke. The recitals of the FIR would show that when the

representative of the company had gone to the present applicant, they had seen the machine, which was parked in front of the house and therefore, there was no question of concealing the said machine. It is apparent on the face of the record by way of the affidavit that the Investigating Officer is making frail attempt to mislead this Court only to see that the application of the applicant is rejected.

7 Upon perusal of the papers of investigation, it appears that the Investigating Officer has not recorded statement of Shamrao Shelke. The learned Counsel for the applicant submits that Mr. Shelke is not protected by way of any pre-arrest bail. The investigating Officer submits that in the month of December, 2014 Mr. Shamrao Shelke has filed an application seeking pre-arrest bail. Atleast till December, 2014 the accused No. 1 was not protected by any court. Today the Investigating Officer is also unable to say as to whether any Court has protected Mr. Shamrao Shelke. But till today there has been no attempt to arrest him. The learned Counsel for the applicant vehemently submits that only after the applicant was granted interim

protection by this Court, accused no. 1 Shamrao Eknath Shelke has filed an application seeking pre-arrest bail. It appears that the basic transaction was between Mr. Shamrao Shelke and the finance company. The applicant herein has not cheated the company in any manner. In view of this, the applicant deserves pre-arrest bail. That accused No. 1 Shamrao Shelke has committed breach of contract and he shall not claim parity with the present applicant and his application be decided on its own merits in accordance with law.

8 The observations made hereinabove are prima facie in nature. The same shall not be considered while considering an application for quashing of FIR or for deciding the discharge application or at the time of trial.

9 Hence, the following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.

(iii) The applicant shall report to the Investigating Officer on four consecutive Sundays between 10 a.m. to 1 p.m.

10 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)