

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1693 OF 2015

Mr.Dinkar J.Shirsat ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Acharya M. Moorthy i/b. M.R.Bodke for the Applicant
Mrs.R.V. Newton, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : DECEMBER 21, 2015.**

P.C.

1. This is an application for anticipatory bail filed by the applicant apprehending his arrest in Crime No.75 of 2015 registered with the Mahad City Police Station for the offences punishable under Section 420, 467, 468 and 471 of the Indian Penal Code.
2. The allegations against the applicant in brief are that the complainant had issued a cheque bearing no. 098692 drawn on IDBI Bank, Mahad Branch, for Rs.2 lakhs towards the construction work undertaken by the applicant and that the applicant herein presented

the said cheque by altering the said amount from Rs.2 lakhs to Rs.20 lakhs, and thereby the applicant withdrew an amount of Rs.20 lakhs from the account of the People's Education Society. Pursuant to the complaint lodged by the Chairman of People's Education Society, the aforesaid crime came to be registered against the present applicant.

3. Shri Moorthy, the learned counsel for the applicant has submitted that the applicant had given tender for the construction work to the tune of Rs. 7 crores. He has submitted that the applicant has carried out the constructions, despite which he was not paid his dues. He has stated that the earlier cheque which was issued was dishonoured and the applicant had already filed complaint against the principal of the said college. He has submitted that the applicant was paid Rs.20 lakhs towards his dues and that he had issued a receipt to the college for having received the said cheque. The learned Counsel for the applicant has further submitted that the said cheque was dishonoured on 28.07.2015. The complainant was informed about the same on the same date, despite which the complaint was filed on 3.8.2015 and the FIR was registered on 7.10.2015. The learned Counsel for the applicant has submitted that

the applicant herein had already lodged a complaint against the signatories of the cheque and others, on 31.7.2015. He submits that the applicant has been falsely implicated in view of the averments made by him in complaint dated 31.7.2015. The learned Counsel therefore contends that the applicant is not involved in commission of the crime and therefore is entitled for bail.

4. The learned APP for the State submits that the cheque which was issued to the applicant was for Rs.2 lakhs and that a perusal of the cheque reveals that an alteration has been made, whereby the amount of Rs.2 lakhs has been altered to Rs.20 lakhs. She has further submitted that the receipt relied upon by the applicant was not issued by the college and that the same is also fabricated. She submitted that the applicant is involved in the crime which is of serious nature and that he is not entitled for any bail.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the applicant and the learned APP for the State. The records prima facie reveal that the applicant had given tender to carry out the construction work of the science hall in the premises of Dr. Babasaheb Ambedkar College, Mahad.

The applicant was issued a work order and he had carried out the construction and submitted bills to the tune of Rs.24,86,400/-. The applicant had requested the college to clear the bills of Rs.22,86,400/-. The said bills were sanctioned and were forwarded to the Chairman for approval. The Chairman had also sanctioned the said bill. The records further reveal that the cheque bearing no.006229 dt.2.9.2014 for Rs.1,95,000/- was issued to the applicant. The said cheque was dishonoured and the applicant herein had filed a complaint against the complainant and Mr. Suresh Aathavale being Criminal Case No.413 of 2014, before the JMFC, Mahad for the offence punishable under Section 138 of the Negotiable Instruments Act. The applicant had also filed another complaint being Criminal Case No.77 of 2015 against the complainant and others for the offences under Section 417, 418, 420 r/w. 34 of the Indian Penal Code.

6. The records reveal that the cheque no. 098692 was issued in favour of the applicant. The said cheque was presented in the bank on 27.7.2015 and on 28.7.2015 the amount of Rs.20 lakhs, as written on the said cheque, was paid to the applicant. The complainant was

informed about the payment of the said cheque on the same date i.e. 28.7.2015, despite which the complainant did not lodge the complaint till 3.8.2015. It is pertinent to note that even prior to lodging of the complaint dated 3.8.2015, the applicant herein had lodged a complaint dated 31.7.2015 against the complainant wherein the applicant had stated that he was issued cheque no.098692 for Rs.20 lakhs and that the Principal of People's Education Society, named in the said complaint had demanded commission of Rs.10 lakhs for having cleared the cheque. The FIR dated 3.8.2015 has been lodged after filing of the said complaint by the applicant. It is also to be noted that though the FIR was lodged on 3.8.2015, the crime has been registered only on 7.10.2015. Prima facie there are no justifiable reasons for delay in lodging the complaint or registering the crime. It is seen that the applicant is a permanent resident of Thane and there are no chances of the applicant absconding or hampering the trial.

7. In view of the above facts and circumstances, the applicant is entitled for anticipatory bail on the following terms and conditions:-

- i) In the event of arrest of the applicant in Crime No.75 of 2015

registered with the Mahad City Police station, the applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned JMFC Mahad.

ii) The applicant shall report to the Investigating Officer between 10 a.m. to 1.p.m. for the period of four days from the date of receipt of the order and further as when required by the Investigating Officer for the purpose of investigation and interrogation.

iii) The applicant shall not leave Thane District, till the filing of the chargesheet without the prior permission of JMFC, Mahad.

(ANUJA PRABHUDESSAI, J.)