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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1856 OF 2015

Mr. Sumeet Gopal Khanna

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. M.K. Dubey for Applicant.

Ms. S.S. Kaushik, APP for the State.

CORAM: A.S. GADKARI, J.

DATE : 10th December 2015.

P.C.

1 The applicant is apprehending arrest in CR No. 08 of 2015 registered with Mulund Police Station under Sections 420, 406 read with Section 34 of the Indian Penal Code.

2 It is the case of the complainant that he is in the business of selling incense sticks, edible oil, butter and tea powder. In the month of February 2013, the applicant along with his father and brother contacted the complainant and impressed upon him to take Distributorship of Tara Health Foods Ltd. Punjab. The applicant along with other accused persons also impressed upon the complainant that the said product was having good

sale in the market and the complainant will be duly benefited due to stock and sale of the said product. The applicant and other accused persons also induced the complainant to pay an amount of Rs.21 Lacs as initial payment and also for the security deposit. The complainant has further specifically stated that as the work of the applicant's company did not start, he repeatedly enquired with the applicant and other accused persons about goods to be sent by the applicant, however, he did not get any response. The complainant therefore demanded back the amount of Rs.21 lacs which he had transferred in the applicant's company by way of RTGS. The father of the applicant thereafter gave a cheque of Rs.21,63,000/- to the complainant which was dishonoured after its deposit in the bank. The applicant being the Director thereafter again gave a cheque to the complainant and informed on telephone to the complainant that the said cheque may not be deposited in the bank as the said amount of Rs.21 lacs will be paid by RTGS into the account of the complainant. The complainant thereafter realised that the applicant and other accused persons have committed the criminal breach of trust and cheated him. He therefore lodged a private complaint in the Court of Metropolitan Magistrate, Mulund. The Metropolitan Magistrate after taking into consideration the facts of the present case was pleased to issue an order under Section 156(3)

thereby directing the police to conduct the investigation into the case. In pursuance of the said order, the present CR has been registered.

3 Heard the learned Counsel for the applicant and the learned APP at length.

4 The learned Counsel for the applicant submitted that the brother of the applicant is the co-accused and he has been arrested by the police and now has been released on regular bail. He therefore submitted that though the present transaction is of civil nature, the complainant has given in the colour of criminality and only with a view to harass the applicant, the present complaint is filed. He submitted that in view of the fact that the co-accused has now been released on regular bail, the custodial interrogation of the applicant is not necessary. He relied upon the decision of the Supreme Court in the case of Ravindra Saxena Vs. State of Rajasthan reported in AIR 2010 SC 1225 in support of his contention.

5 I have perused the entire record produced before me. I have also minutely considered the decision of the Supreme Court in the case of Ravindra Saxena Vs. State of Rajasthan. At the outset, it may be noted here that the reliance placed by the learned Counsel for the applicant on the said decision has no relevance in the facts and circumstances of the present case in hand. It is the settled position of law that each and every case has to be

decided on its own merits. The Constitution Bench of the Supreme Court in the case of Gurbaksh Singh Sibbia Vs. State of Punjab reported in (1980) 2 SCC 565, has in unequivocal terms stated that each and every anticipatory bail application has to be considered after taking into consideration the facts and circumstances of the case. In the present case, the plain reading of the first information report discloses that since the inception the applicant was having intention to commit the criminal breach of trust and to cheat the complainant and in pursuance of the said design the applicant with other accused persons induced the complainant to pay an amount of Rs.21 lacs. Their said intention is further ratified by their act that they gave a cheque to the complainant for the said amount as repayment which was obviously dishonoured.

6 In view of the facts and circumstances of the present case, I am of the opinion that the custody of the applicant is necessary for recovery of the said amount and to unearth the truth behind the said crime. The release of co-accused on regular bail cannot have any bearing as far as the decision of the present applicant is concerned. In view of the above, I find no merits in the present application and the same is rejected.

7 It is made clear that the observations made hereinabove are in

context with the decision of the present application only and the Trial Court will not get influenced by the same at the time of deciding the regular bail application or conducting the trial.

(A.S. GADKARI,J.)