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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.255 OF 2016

Gulam Sadeq Gulam Subhani Farooqui ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr S.P. Katneshwarkar, Advocate for applicant;
Mr M.M. Nerlikar, Addl. Public Prosecutor for respondent;
Mr Md. Waseemullah, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 8th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant seeks grant of pre-arrest bail, in connection with C.R. No.352 of 2015, registered with Satara police station, Dist. Aurangabad, for offences punishable under sections 420, 406 read with section 34 of the Indian Penal Code, for an incident alleged to have taken place during the period from 16th July, 2013 to 18th July, 2013, for which first information report came to be lodged on 18th November, 2015.

2. The prosecution case against the applicant herein is that he had formed a joint venture so as to carry out certain business contract and had invited the complainant as one of the partners. The complainant, being accepted as a partner in the business, had parted with substantial amount to the applicant and the business proposal was given effect to.

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3. It is further the case of the prosecution that the applicant, without sharing the profit and parting with the principal amount to the complainant that was invested by him, has played a fraud and thus cheated him. According to the prosecution story, the applicant had issued two cheques of Rs.10,00,000/- each in favour of the complainant, however, the same were dishonoured.

4. While trying to make out a case for grant of pre-arrest bail, Mr Katneshwarkar, learned Counsel appearing on behalf of the applicant, would strenuously urge that having regard to the nature of allegations in the first information report, viz. differences and disputes with regard to contract, cannot be the cause for impleading the applicant as an accused and further making him dis-entitled for grant of pre-arrest bail. He would then urge that in the fact-situation of the instant matter, the remedy available to the complainant is before the civil court, either for recovery of the amount or rendition of accounts. He would then add that the said amount was already returned by the applicant to the complainant in cash.

5. Learned Counsel would then urge that since the other accused, who are alleged to have been involved in the crime in question, are already protected by this Court, the applicant is entitled to be treated at par with them and as such, claimed the relief on the principle of parity. He has invited my attention to the order dated 5th January, 2016, passed by this Court in Criminal Application Nos.6752 of 2015 and 6837 of 2015.

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6. Learned Addl. Public Prosecutor, who is assisted by learned Counsel appearing on behalf of the complainant, has opposed the application on the ground that the prosecution story as narrated in the first information report and the investigation carried out till date depicts *prima facie* involvement of the applicant in commission of the crime in question and as such his custodial interrogation is necessary. Learned Addl. Public Prosecutor then would urge that *mens rea* on the part of the applicant could be assessed, as there was neither any tender floated as was represented by the applicant by Maharashtra Jivan Pradhikaran nor applicant was awarded any work of disposal of scrap, against which the complainant was introduced as partner in the business.

7. Learned Addl. Public Prosecutor has relied upon certain information supplied by the Maharashtra Jivan Pradhikaran to aforesaid effect, informing that there was no decision on the part of the said statutory authority to sell its scrap through tender, for which the offer of the applicant was accepted by the authority. He would then urge that in view of provisions of section 139 of the Negotiable Instruments Act, the Court must presume that the cheques issued by the applicant in favour of the complainant, which were dishonoured, were issued in discharge of legally enforceable liability or debt. Thus, he prayed for rejection of the application.

8. Perused the first information report and papers of investigation carried out till date. The fact remains that the complainant was introduced

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as a partner in the business of scrap by the applicant, by demonstrating that there was a concluded contract in his favour for lifting of the scrap to the extent of 700 Tons. There is voluminous record which depicts acceptance of amount by the applicant from complainant in the said business proposal, whereas the investigation depicts that there was no such business proposal/tender by the applicant and acceptance thereof by the statutory body. It is then required to be noted that issuance of cheques by the applicant, which is not in dispute, speaks about his criminal which is required to be dealt with in accordance with the provisions of section 139 of the Negotiable Instruments Act, since there is a presumption against the applicant as he had issued the cheques in favour of the complainant and those were indisputably dishonoured.

9. The investigation, in my opinion, depicts *prima facie* involvement of the applicant and the same speaks of *mens rea* from the inception of the offence, as such, he is not entitled for pre-arrest bail.

10. The applicant herein cannot claim parity with other accused persons, who are protected by this Court, as they have not issued cheque/s in favour of the complainant, whereas the applicant in the case in hand has admittedly issued two cheques of Rs.10,00,000/- each in favour of the complainant. In this background, principle of parity cannot be invoked by the applicant in the present matter.

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10. In the result, Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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