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

Criminal Application No. 3811 of 2016

District : Jalna

Pradip s/o. Shankarrao Walvekar,
Age : 64 years,
Occupation : Business and
Director of Hi-Tech Farms and
Foods (Poona) Ltd., Pune,
R/o. Flat No. 503,
Marigold Society,
Kalyani Nagar, Pune and
At present R/o. Flat No.602,
6th Floor, "Konark Vista" Building,
Mundhwa Bridge, Hadpsar,
Pune. .. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Police Station, Jalna,
Taluka and District : Jalna. .. Respondent.

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Mr. Ajit D. Kasliwal, Advocate, for the applicant.

Mr. S.J. Salgare, Addl. Public Prosecutor, for the respondent.

Mr. Anil S. Bajaj, Advocate, for the original complainant.

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CORAM : A.M. BADAR, J.

DATE : 21ST SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 207/2016 registered with Taluka Police Station, Jalna, District Jalna, for offences punishable under Sections 406, 420, 507, 508, read with Section 34 of the Indian Penal Code, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. By drawing my attention to the FIR lodged on 17.05.2016, the learned Counsel submitted that the same is in respect of the agreement dated 15th January 2016. The learned Counsel for the applicant further argued that this agreement was subsequently cancelled by cancellation deed dated 19.03.2016. The learned Counsel further argued that this fact is conspicuously absent in the FIR. My attention is drawn to the receipt dated 17.05.2016 as well as the receipt dated 18.05.2016 to show that some amount was paid on those dates. With this, by relying on judgment of the Hon'ble Supreme Court in the matter of ***Veer Prakash Sharma Vs. Anil Kumar Agarwal & another*** **[2007 ALL MR (Cri.) 2618 (S.C.)]**, the learned Counsel submitted that intention to cheat since inception is missing in the FIR. Therefore, according to the learned Counsel for the applicant, as the transaction is civil in nature, custodial interrogation of the applicant is not warranted.

3. The learned Addl. Public Prosecutor opposed the application by contending that some amount was repaid by the accused and some amount is still outstanding.

4. I have also heard the learned Counsel appearing for the informant / intervenor. He drew my attention to the notice dated 25th April 2016 issued by the present applicant and addressed to the Secretary, Hi-Tech Farms & Food Products Ltd., Pune, mentioning that co-accused Vishwas Dixit is acting against the interest of the Company.

5. Perused the FIR as well as record made available. According to the prosecution case, as reflected from the FIR lodged by the Manager of the Rukmini Impex Private Ltd., Jalna, the applicant and co-accused promised to supply 500 Tons of raw shelled cashew nuts to Rukmini Impex Pvt. Ltd. Accordingly, the applicant and co-accused have in fact received an amount of Rs. 75,00,000/- towards the price of 500 Tons of raw shelled cashew nuts. However, according to the informant, neither the material was supplied nor this amount of Rs. 75,00,000/- was refunded by the applicant and his partners. It is seen that the amount of Rs. 75,00,000/- was paid on 27.01.2016, 28.01.2016 and 24.02.2016 by RTGS transaction to the applicant and co-accused by the informant. The FIR came to be lodged on 17.05.2016 by the Manager of

Rukmini Impex Pvt. Ltd. The FIR shows that despite repeated requests to supply the material, it was not supplied by accused persons. The contract document placed at Annexure "B" to the application shows that the period for supply of material was from January to Mid March of 2016. Then, it appears that this contract was cancelled by a deed dated 19.03.2016. The deed of cancellation of contract reflects that accused persons had given post-dated cheques towards refund of the consideration received by them. It is not in dispute that none of those post-dated cheques could be encashed. All those cheques were dishonoured. Then, the FIR came to be lodged on 17.05.2016. Receipts placed on record shows that amount of Rs. 15,00,000/- towards refund of part of consideration was paid on 17.05.2016 and then an amount of Rs. 2,00,000/- was paid to the informant / Company towards refund of part consideration on 18.05.2016.

6. With this chronology, it is apparent that though the material was to be supplied by mid-March of 2016, nothing was supplied despite receipt of hefty amount of Rs. 75,00,000/-. All post-dated cheques which were towards refund of the consideration received and handed over at the time of cancellation of contract were also dishonoured. Intention to cheat can be gathered always by surrounding circumstances as the intention is a state

of mind. In the case in hand, the intention to cheat since inception is reflected from the chronology mentioned in the foregoing paras. Therefore, it cannot prima facie be said that no offence punishable under Section 420 of the IPC is made out. The ruling in the matter of ***Veer Prakash Sharma (supra)***, cited by the learned Counsel for the applicant cannot be of any use in this context. The amount was entrusted to accused persons in order to enable them to supply the material. That amount seems to be misappropriated. Part refund of consideration and that too after lodging the FIR is of no consequence.

7. Considering the allegations made in the FIR and material on record, no case for grant of anticipatory bail is made out.

8. The Application is accordingly rejected.

9. At this stage, the learned Counsel for the applicant makes an oral prayer that the order granting ad interim anticipatory bail may be continued for a period of two weeks from today. However, this is not a fit case to continue the interim protection for any further period. Hence, the prayer so made is rejected.

(A.M. BADAR)
JUDGE

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