IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 564 OF 2016

Mohankumar Virchand Jain … Applicant

vs.

The State of Maharashtra … Respondent

Mr. Rizwan Merchant a/w Mr. Kiran Jain, Ms. Neeta Solanki i/by Kiran Jain & Co., Counsel for the applicant.
Mr. A. H. Ponda, for the first informant.
Smt. Rutuja Ambekar, A.P.P. for the State/respondent.

Coram : N. W. SAMBRE, J.
Date : 25th November, 2016

P.C. :

1. The applicant is seeking pre-arrest bail in Crime No.236 of 2015 for the offence punishable under Sections 420 of the Indian Penal Code.

2. The case of the prosecution against the applicant is that the applicant and the complainant were in friendly family relations and also business relations. The complainant used to get supply of goods from the applicant and against the said goods an LC was passed to ensure the payment.

3. It is the case of the prosecution that on 9th December, 2014 and 30th December, 2014 upon oral understanding between

the complainant and the applicant, complainant executed acknowledgement of the goods received from the present applicant, however, in fact no such goods were delivered and the amount was paid by the applicant. It is also claimed that the said arrangement was agreed as applicant was in great financial difficulty. It was agreed between the parties that either to deliver the goods to complainant or return the amount accepted by the present applicant. Since the applicant has not honoured his commitment, the offence came to be registered.

4. Mr. Merchant, the learned counsel for the applicant while taking me through the various transactions before and after the alleged disputed transactions of 9th December, 2014 and 30th December, 2014 would submit that the case of the applicant of dispute about payment and or delivery of goods, the complainant placed order for purchase of goods subsequent to the disputed transactions i.e. 9th December, 2014 and 30th December, 2014. He would then urge that there are bonafide dispute between the parties, as the matter is already subjudice before the competent Civil Court. The other contentions are that, the applicant has already made available all the documentary evidence including that of the delivery invoice, the papers from the banker so as to demonstrate that, in fact the transaction was given effect and was

taken to its logical end by delivering the goods. According to him, the applicant has already attended the Investigating Officer time and again and the bail granted by this Court needs to be confirmed.

5. The learned A.P.P. has filed a detailed affidavit of Investigating Officer so as to demonstrate that, it is out of longstanding relationship between the parties, the complainant has tried to help the applicant in his financial difficulty to come out the crises. According to the learned A.P.P., perusal of the complaint as tendered in the month of May, 2015, the subsequent investigation depicts about the prima facie involvement of the applicant in the crime in question, i.e. of cheating the complainant. The learned A.P.P. would rely upon three statements of the applicant recorded by the Investigating Officer, the extract of Bank accounts of the applicant so as to demonstrate that there was a liability of financial institutions against the applicant and the other material viz. the finance taken from the financial institution. It is also urge that the applicant is not the original manufacturer of goods supplied, who used to procure the same from other sources and supplied the same to the complainant. According to the learned A.P.P. there is enough material to infer the prima facie involvement of the applicant in the crime in question.

6. Perused the entire investigation papers. The applicant in clear terms have admitted that he is not the manufacturer but the source of goods to be supplied to the complainant is named by him. The said source in clear terms including that the transporter and the other person has stated that on 9th December, 2014 and 30th December, 2014, no supply or transportation was effected to the complainant from the applicant. The applicant in his statement was unable to narrate the source of the goods as is claimed to have been supplied to complainant. The payment of amount to the complainant by the applicant is not under dispute.

7. The other issue that is require to be considered is, perusal of the application depicts that the applicant has transferred the amount, which was received from the complainant to his O. D. Account and in addition thereof he got loan sanctioned form the other institution, such as H.D.F.C. Bank, is not in dispute. The fact that the applicant's account was having zero balance as he adjusted the amount which was paid by the complainant, in O. D. Account, which could be inferred to be over due.

8. Apart from above, the applicant has claimed that he has procured the goods from his son's company however the said

source is also not identified from the record and no amount has been paid by the applicant to source from whom the supply is procured. Rather the son has proceeded to park the amount in fixed deposit which was received form the complainant.

9. From the above material, it can be easily inferred that the applicant is prima facie involved in the crime in question.

10. The involvement of applicant in the offence in question has colour of an economic offence, which is to be seen vividly. In view thereof, no case is made out. The application stands rejected.

11. In the interest of justice, interim protection is continued for the period of three weeks from today.

[N. W. SAMBRE, J.]