IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 945 OF 2016

Bharat Vishwasrao Kale. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Sunil Gulab Jagdane, advocate for Applicant.

Ms. A.R.S. Baxi, advocate for respondent No. 2.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 29, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in M. Case No. 3 of 2016 registered at Panvel City Police Station for the offence punishable under section 420 of the Indian Penal Code.

3 It is the case of the prosecution that one Ganpatrao Uttamrao Pawar filed a complaint before the Judicial Magistrate First Class, Panvel on 30/1/2016 alleging therein that the complainant is working Naval Dockyard. The applicant herein is working as police constable who is assigned work as wireless operator in the office of the Commissioner of Police at Mumbai. They used to travel by the same local everyday and the offices where they were working are adjacent to each other and they have got acquainted with each other. They have developed friendly relations. One day, in the course of discussion, the complainant had informed the applicant that he is intending to book one room kitchen in a scheme under construction and is likely to sign registration deed within one week and would get possession within 6 months. The applicant had requested the complainant to sign registration deed after one month and give the same amount to him as a hand loan and that he would return the same within one month. The complainant had arranged for the fund by taking loan from the society of his wife and his savings. Prior to that, the applicant had taken Rs. 97,000/- from the complainant and

had returned the same by cheque and hence, had inspired faith from the complainant.

4 The applicant had informed the complainant that he needs an amount for the registration of a flat of his brother-in-law. On one or other count, the applicant had taken total amount of Rs. 3,85,000/- from the complainant. In the interregnum, he has issued cheque to the complainant, but had requested him not to tender the said cheque for encashment. He kept evading to pay the amount. The complainant was inclined to file a report and at that time, he is taken to one Mr. and Mrs. Patil. They had also convinced to the complainant that he would get the amount within short time.

5 It is pertinent to note that on one occasion, the applicant had also shown to the complainant that he had invested the amount in Kalbhairav Agro Company. He has also sent WhatsApp message to the complainant that Rs. 18 Lakhs were in the said company in the name of his wife, friends and relatives on 14/2/2014. The

complainant was surprised to see that some amount was shown to be invested in his name also to the tune of Rs. 3,80,000/-. He was surprised because he had given hand loan in the month of June, 2014 and the investment is shown to be made in February, 2014. The complainant has reaslised that he has been cheated and there was an element of cheating right from inception. He has reported the said matter to the Superintendent of Police, Nasik Rural on 1st September, 2015. But the police was of the opinion that this is a private transaction between the complainant and the applicant and therefore, had not taken any action. The complainant was running from pillar to post as cognisable offence was made out. Finally, the complainant was constrained to file a complaint before the Judicial Magistrate First Class and seeks direction under section 156(3) of the Code of Criminal Procedure, 1973 and thereafter, the investigation was initiated.

6 It is an offence by a man in uniform. The learned Counsel for the original complainant/intervenor rightly submits that the applicant

has cheated the complainant and in all probabilities, many more people under the garb of his uniform. There is a secured perception in respect of man in the uniform. This transaction in the present case cannot be considered as private transaction but the tendency of man in uniform to cheat common man. This would show criminal misconduct in discharge of official duty and the applicant would deserve to be prosecuted under Section 13 of the Prevention of Corruption Act as well.

7 The learned APP submits that in fact, information was given to the Superintendent of SRPF as the applicant is working with the State Reserve Police Force. However, it appears that at every level it is seen that it is a case of private transaction between two parties and no action is being taken against the applicant.

8 This is a fit case for custodial interrogation and only because the applicant is a man in uniform, he cannot escape from the clutches of law. Hence, the application seeking pre-arrest bail deserves to be

rejected. Needless to state that the interim relief granted vide order dated 8/8/2016 deserves to be vacated. Hence, the application stands rejected and disposed of accordingly.

9 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of hearing of an application under Section 439 of the Code of Criminal Procedure, 1973.

(SMT. SADHANA S. JADHAV,J)