

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1219 OF 2016

Mr. Samir Joginder Dhingra

.....Applicant

V/s.

State of Maharashtra
through MIDC Police Station

.....Respondent

* * * * *

Mr. Vijay Advani, Advocate for the applicant.

Ms. R.M. Gadhvi, APP for respondent, State.

CORAM :- N. W. SAMBRE, J.

DATED :- 19TH DECEMBER, 2016.

P.C. :-

1). In Crime No. 9 of 2016 registered with the non-applicant Police Station for offences punishable under Sections 406, 420 read with Section 34 Indian Penal Code. The applicant, herein, is seeking pre-arrest bail.

2). The prosecution story as narrated in the FIR and other material on record depicts that, the present applicant has promised the complainant to part with contract of scanning which was

awarded by the Municipal Corporation of Greater Bombay to the tune of Rs.5,70,00,000/- and for executing such work the applicant has induced the complainant to purchase scanning machine. It is alleged that, neither the machine was supplied nor the contract in question was given in favour of the complainant though consideration of machine was received, as such crime in question.

3). Heard Shri. Ponda, the learned Counsel for the applicant. Mr. Ponda, would urge that the present proceedings are initiated with an intention to twist the arm of the applicant so as to recover the alleged amount which was parted by the complainant towards the consideration of scanning machine which infact was supplied by the applicant. So as to substantiate, he would rely upon the invoice and other email exchanged between the parties. According to him, the dispute in question is contractual in nature and if the complainant is entitled for any amount from the applicant, the remedy lies before the Civil Court and not in criminal proceedings. According to applicant, there are no criminal antecedents. Pursuant to the ad-interim protection, he has co-operated in the investigation and is very much available for further investigation and if required for prosecution.

4). Per-contra, the learned Counsel for the complainant, assisted the learned APP, would strenuously urge that though the amount was paid, the scanning machine in question was never supplied by the applicant. According to him, the custodial interrogation of the applicant is necessary for the purpose of

recovery of the machine in question. According to him, once the Magistrate is satisfied that there exists a *prima-facie* case against the applicant, order under Section 156(3) Criminal Procedure Code came to be passed and in view thereof, this Court should be slow in interfering with the process of investigation by granting bail.

5). With the assistance of respective learned Counsel, I have perused the material available on the record. What could be gathered from the investigation papers is the scanning machine was supplied by the applicant. However, there appears to be some dispute qua whether the machine was in proper condition and whether it was returned to the applicant for carrying out appropriate repairs. It is then to be noted that, the entire contention as is raised in the FIR is based on the contractual relationship between the applicant and the complainant. The claim that the applicant has not awarded part of the work of scanning which was received by him from the Bombay Municipal Corporation and as such has practised fraud is an issue which could be looked into in the civil proceedings as the complainant has every remedy of seeking damages/compensation from the applicant. Apart from above, what could be gathered from the papers as are placed on the record, the Court below has rejected the application on the ground that the matter is of technical and complex nature and investigation is required.

6). Ofcourse by granting anticipatory bail, this Court is not in any way scuttling the investigation. Further, this Court is of the

firm view that the proceedings in question are initiated for recovery and the relation between the applicant and the complainant appears to be contractual in nature. As such the application needs to be allowed.

7). The Bail Application is allowed. In the event of arrest of the applicant in Crime No. 9 of 2016 registered with MIDC- Police Station for offences punishable under Sections 406, 420 read with Section 34 Indian Penal Code, be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs.Fifty Thousand only) with one or two sureties in the like amount.

8). The applicant shall attend the Investigation Officer on 28th, 29th and 30th December, 2016 between 10 to 12 p.m. and thereafter as and when called.

9). The applicant shall not tamper with the evidence and/or influence the witnesses in any manner whatsoever.

(N.W. SAMBRE, J)