

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1959 OF 2016

Shantilal Ranmal Shah & ors.

... Applicants

vs.

The State of Maharashtra

... Respondent

Mr. Ghanshyam Upadhyay i/by Law Juris, for the applicants.

Mr. N. B. Patil, A.P.P. for the State/respondent.

Smt. Kamana Kapoor, for the original complainant.

Coram : N. W. SAMBRE, J.

Date : 18th November, 2016

P.C. :

1. The applicant is seeking pre-arrest bail in Crime No. 509 of 2016 for the offence punishable under Sections 420, 406, 504, 506 r/w 120B of the Indian Penal Code.

2. It is the case of the complainant that the complainant and the applicant, who are the neighbours for longtime and having cordial business relations. Once upon requests of the applicant, the complainant had advanced substantial amount and towards security had taken post-dated blank cheques and receipt to that effect was executed. It is then claimed that lastly when the amount was given to the applicant, the applicant has not returned the same and has rather come out with false defence of returning of amount of Rs.27,00,000/- to the complainant.

3. In this background, Mr. Upadhyay, the learned counsel for the applicant while trying to make out case for bail would urge that perusal of the F.I.R. depicts that entire civil dispute is given colour of criminal offence. Then he submits that just because the complainant was not able to take a proceedings under Negotiable Instruments Act, he has filed the present false case against the applicant including his all the family members. He then submits that the nature of allegation in the F.I.R. and the details narrated by the complainant prima facie speaks fabrication of the documents to use for recovery of the amount.

4. While opposing the claim, the learned A.P.P. who is assisted by the learned counsel for the complainant while relying upon the judgments of the Apex Court submits that since the applicants have approached this Court with unclean hands in other words (has come out with false defence of returning Rs.27,00,000/-). The application is liable to be rejected. In addition to above, the learned A.P.P. submits that the custodial interrogation is necessary so as to find out the manner in which fraud is committed and tactics by the applicant. What would be gathered from the record is if the complainant is holder of the cheques in due course, there is presumption under Section 138 and 139 of the Negotiable Instruments Act that the cheques were issued admitted liability, which is required to be repaid by the complainant. However, the cheque has lost its limitation for presenting it for acknowledgement. Apart from above, the fact remains for the instant is as sole as year 2011 till year 2013 in which the F.I.R. came to be lodged in year 2016 for which there is hardly any intention. Prima facie the dispute is as such canvassed

in the F.I.R. appears to be a civil dispute and the remedy to the complainant lies elsewhere.

5. In this background, in my opinion the case for grant of bail is made out. The application as such allowed. In the event of arrest, the applicants be released on furnishing P. R. Bond of Rs.50,000/- each with one or two sureties in the like amount on the following conditions.

- (i) The applicants shall furnish their mobile phone numbers and permanent place of abode to the Investigation Officer .
- (ii) They shall attend the Investigating Officer on 5th December, 2016 and 7th December, 2016 between 10 am. to 12 noon. and thereafter as and when called for.
- (iii) They shall not tamper the evidence and/or influence the witnesses.

[N. W. SAMBRE, J.]