

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

CRIMINAL APPLICATION (BA) NO.960 OF 2016

(Shitanshu Mahesh Joshi ..vs.. State of Maharashtra, through PSO, PS Ambazari, District Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Rathod, Advocate for applicant,
Shri H.R. Dhumale, Addl.P.P. for non-applicant

CORAM : P.N. DESHMUKH, J.
DATED : 09-12-2016

Heard learned Counsel for applicant and learned
Additional Public Prosecutor for non-applicant.

This application is filed for bail by accused involved in Crime No.289/2015 registered by Ambazari Police Station, Nagpur for the offences punishable under Sections 406 and 420 of the Indian Penal Code, on the strength of order passed by the Magistrate's Court under Section 156(3) of the Criminal Procedure Code.

On registering offence as aforesaid, during the course of investigation, it reveals that there was tripartite agreement between the applicant, complainant and bank, which has sanctioned amount to the extent of Rs.21,25,000/- and according to the MOU entered into by applicant alongwith complainant Loknath out of said sanctioned loan amount of Rs.13,64,000/- came to be released to applicant's firm in two installments of

Rs.9,95,000/- and Rs.3,69,000/- respectively for supply of stivia plants and manures for cultivation of agricultural land of complainant. However, thereafter due to certain technicalities, project initiated by applicant could not proceed and accordingly the Memorandum of Understanding came to be entered between applicant and complainant vide which amount of Rs.13,64,000/- was agreed by applicant to be refunded back to complainant with interest on or before 31-03-2013.

Learned Counsel for applicant has submitted that out of said amount, applicant has refunded Rs.6,15,000/- to the complainant, however, he has not deposited the same with the concerned bank i.e. Karnataka Bank who had thus initiated recovery proceedings before the Debt Recovery Tribunal.

In pursuance to earlier order, learned Counsel for applicant has placed on record details of amount repaid by applicant, same statement of account is taken on record marked as "X" for identification. According to this, amount to the extent of Rs.7,05,000/- is repaid by applicant on various dates. Learned Additional Public Prosecutor, on instructions, has not disputed the said fact. In that view of the matter, amount to the extent of Rs.6,59,000/- appears to be in due, to be paid by applicant.

Learned Counsel for applicant submits that so far as remaining amount is concerned, applicant is unable to make immediate payment thereof in view of the fact that he had provided his services for the purpose of two years and had also supplied stivia plants to complainant alongwith required manures, fertilizers, etc. during which period he had spend substantive amount for this purposes.

It is noted that the charge-sheet is filed and the entire case of prosecution is based on documents. In that view of the matter, there is no purpose in keeping applicant behind bar pending trial, though above stated amount is yet to be repaid by him.

In that view of the matter and as there is no apprehension of applicant's fleeing from justice who is permanent resident of Nagpur, application is allowed as per order below.

Order

(i) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

(ii) While on bail, applicant shall mark his presence with Ambazari Police Station once in three months at first day of each such month pending trial.

(iii) Applicant shall produce proof of residence and shall update the same in the event of change of residence in future.

The application is accordingly allowed.

JUDGE

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