

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

BAIL APPLICATION NO.2852 OF 2017

Eknath Ganpat Sakhare

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr.Ramchandra K. Mendadkar for the Applicant.

Ms. S. S. Kaushik, APP for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 14th December, 2017**

P.C.:

1. Heard. This is an application under section 439 of Cr.P.C. The Applicant herein is arrested on 1/11/2017 in Crime No.70/2017 registered at Shriwardhan Police Station for the offence punishable under sections 406, 420 read with 34 of Indian Penal Code.

2. It is the case of prosecution that one Shri Shantaram Dhondiba Bhanuse lodged report at Shriwardhan Police Station on 15/9/2017 alleging therein that he had purchased the land in the year 2008. He had started construction of his house and due to paucity of funds had left the construction incomplete. That the present Applicant was residing with his neighbour at Bhardoli. He used to borrow money from the complainant and the Applicant used to return the same within the stipulated time. That he had informed the complainant that his friend Mangesh Bhuwad will complete the construction work. He is in need of Rs.25 Lakhs and that he would return the same. By placing implicit reliance the complainant had paid the amount to Mangesh Bhuwad. The complainant had continued to pay the said amount. It was agreed between the parties that they would

settle the amount by constructing the house. It is alleged that the Applicant was aware that the complainant had Rs.20 Lakhs towards Fixed Deposit. The complainant has alleged that he continued to demand the amount from the Applicant as well as from Mr.Mangesh Bhuwad. It is alleged that the Applicant had issued a cheque of Rs.2 Lakhs to the complainant in January'2017. However, the said cheque was dishonoured and hence according to the complainant the Applicant had committed breach of trust and cheated the complainant.

3. It is apparent on the face of record that the FIR was lodged subsequently for recovery of the amount which was given towards hand loan. That the notice under section 138 of Negotiable Instruments Act was also issued to the Applicant. It prima facie appears that there was some contract between the Applicant and the complainant and that the Applicant had received an amount of Rs.25 Lakhs. However, further incarceration is unwarranted. The criminal proceedings cannot be initiated for the purpose of recovery of the amount. Learned counsel for the Applicant submits that at the most it can be a civil liability and that can be considered at the appropriate stage in an appropriate proceedings on the basis of the documents which would show that the amount was transferred in the name of the Applicant. The Applicant deserves to be enlarged on bail since he is in custody for more than a month.

4. The observations made hereinabove are prima facie in nature and shall not be considered for quashing of FIR, discharge application or at the time of trial as they are restricted only to the application under section 439 of the Code of Criminal Procedure. Hence, the order:

ORDER

1. The application is allowed.
2. Applicant-Eknath Ganpat Sakhare be enlarged on bail on

furnishing P. R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

3. Applicant shall report to the Police Station on every Sunday between 10.00 a.m. and 12.00 noon till filing of the charge-sheet.

Application stands disposed of.

(SADHANA S. JADHAV, J.)