

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

ANTICIPATORY BAIL APPLICATION NO. 996 OF 2018

Krishnakumar K.Applicant

V/s.

The State of MaharashtraRespondent

WITH

CRIMINAL APPLICATION NO. 713 OF 2018

IN

ANTICIPATORY BAIL APPLICATION NO. 996 OF 2018

Bharat Shirish AttalIntervenor

In the matter between :-

Krishnakumar K.Applicant

V/s.

The State of MaharashtraRespondent

Mr. Bhushan U. Deshmukh for the applicant.

Ms. Pallavi N. Dabholkar, APP for the State.

Ms. Rati Sinhasane i/b. Mr. Umesh R. Mankapure for the intervenor.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 31st OCTOBER, 2018.

P.C.:

. This is an application under section 438 of Criminal Procedure Code, filed by the aforesaid applicant, apprehending his arrest in C.R.No.2/2018 registered with Vishram Baug Police Station, District Sangli for offences punishable under sections 420, 406 r/w. section 34

of the Indian Penal Code.

2. Heard Mr. Bhushan Deshmukh, learned counsel for the applicant. He submits that the applicant has not received second consignment of turmeric and he was not liable to make any payment to the first informant. He has submitted that the first informant can always recover the money by filing a civil suit and that the custody of the applicant is not required for any purpose.

3. Ms. Pallavi Dabholkar, learned APP and Ms. Rati Sinhasane, learned counsel for the intervenor submits that the first information report as well as the other material on record prima facie discloses that the applicant had an intention of cheating. She further submits that though the applicant was granted interim bail, he has not complied with the conditions. She submits that the conduct of the applicant would not justify grant of pre arrest bail.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The aforesaid crime was registered pursuant to the first information report lodged by one Bharat Shirish Attal. The first

informant is in business of sale of turmeric. The first information report prima facie reveals that M/s. Uday Masala of which the applicant is a Managing Director had placed an order for supply of 16,000 kgs. turmeric and agreed to make the payment within 30 days from the date of supply of turmeric. The first informant supplied turmeric worth Rs.11,64,000/- as per the purchase order dated 19/04/2017. The applicant's company confirmed the receipt of the said consignment and paid Rs.2,81,130/- and further undertook to pay the balance amount immediately.

6. The first informant has alleged that the said company had placed another order for supply of 16,000 kgs of turmeric worth Rs.11,04,000/-. The first informant has stated that he had supplied second consignment of turmeric on 24/05/2017. The first informant has stated that despite receipt of the said consignment, the applicant has failed to make the payment and further refused to acknowledge the receipt of the second consignment.

7. As far as the first consignment is concerned, the applicant has not denied having placed an order and having received turmeric worth Rs.11,64,000/-. It is to be noted that the applicant has not disputed having received the first consignment of turmeric worth

Rs.11,64,000/-. The applicant has paid Rs.2,81,130/- and has failed to pay the balance amount of Rs.8,82,870/- despite demands raised and assurances given. The learned counsel for the applicant has not disputed the liability of the applicant to pay Rs.8,82,870/-. He, however, submits that the applicant is unable to pay the said amount and that the same can be recovered by filing a civil suit. It is true that criminal proceedings cannot be treated as recovery proceedings. Nevertheless, the fact that the applicant had declined to pay the undisputed amount without any justifiable reasons prima facie indicate that the applicant had an intention to deceive and cheat since the inception.

8. The records also reveal that despite having failed to pay the amount of the first consignment, the applicant had placed an order for 16,000 kgs of turmeric worth Rs.11,04,000/-. The applicant has denied having received the said consignment. The respondent no.1 had by email dated 24/05/2017, informed the applicant that the consignment was sent on 21/05/2017 by vehicle no. TN-34-M-2878. The statement of the driver of the truck bearing no.TN-34-M-2878 has been recorded. The statement of this witness prima facie indicates that he had taken the turmeric from M/s. Arjun Devkishan Attal, by a truck

of Tamilnadu Kerala Transport. He was to deliver the said turmeric to M/s. Uday Masala as per the address mentioned in the P.O.No.RM/021/2017-2018. He has stated when he reached the premises of M/s. Uday Masala as per the address mentioned in the purchase order, told him to take the truck to K.V.K. Weighbridge, Polichi Road, Negamam and thereafter, the vehicle was taken to the godown of the premises and thereafter the consignment was unloaded in the godown of company premises. The said statement is prima facie supported by consignment copy of Tamilnadu Kerala Transport and also the receipt of Weigh bridge. The weigh scale bear the stamp of accused/company and signature of accused no.4. The above material prima facie indicates that M/s. Uday Masala has received the turmeric as per the Purchase Order No.RM/033/2017-2018.

9. The records thus indicates that the applicant has refused to pay an amount of Rs.8,82,870/- despite acknowledging receipt of the turmeric. The records further reveal that despite having failed to make the full payment in receipt of the first consignment, the applicant by Purchase Order No.RM/033/2017-2018 placed an order for supply of 16,000 kgs of turmeric. The applicant not only failed to make the payment in respect of the second consignment, but even denied having

received the turmeric, when the material on record prima facie proves delivery of turmeric as per the second purchase order.

10. It is to be noted that in *Hridaya Ranjan Prasad Verma & ors v/s. State of Bihar and anr (2000) 4 SCC 168*, wherein the Apex Court has observed thus :-

“ It is held time and again that the distinction between mere breach of contract and the offence of cheating is a fine one. It would depend upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of transaction that is the time when the offence is said to have been committed. Therefore, it is the intention which is gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such an culpable intention right at the beginning that is when he made the promise cannot be presumed. ”

11. In the instant case, as stated earlier, the records prima facie reveals that the applicant had received turmeric worth Rs.11,64,000/- as per the Purchase Order No.RM/021/2017-2018. The applicant has

paid only an amount of Rs.2,81,130/- and has declined to pay the balance amount without any justifiable reasons. The records further indicates that the applicant has also received the second consignment of turmeric as per the Purchase Order No.RM/033/2017-2018 despite which the applicant has failed to acknowledge the receipt and consequently refused to pay the price. The above facts and circumstances prima facie indicates that the applicant had fraudulent and dishonest intention from the inception. Thus, the material on record prima facie shows the involvement of the applicant in commission of the said crime. Keeping in mind the above facts and circumstances, in my considered view, this is not a fit case to exercise discretion under section 438 of the Criminal Procedure Code. Hence, the Application is dismissed.

12. The aforesaid observations are prima facie in nature and shall not be construed as an expression of opinion on merits of the matter.

13. In view of dismissal of ABA No.996/2018, Intervention Application No.713 of 2018 does not survive and the same is disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)