

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

ANTICIPATORY BAIL APPLICATION NO.1914 OF 2018

Rupesh Krushna Patil

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Sudeep Pasbola a/w. Mr.Bhaves Thakur & Mr.Karl
Rustomkhan i/b. Mr.Rahul Arote, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent - State.

Mr. Shekhar Dombé, PSI, Ganeshpuri Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 19, 2018.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.I-94 of 2018, registered for the offence punishable under Section 407 of Indian Penal Code (for short "IPC"). First Information Report was lodged on 26th August, 2018 with Ganeshpuri Police Station, Bhiwandi, District - Thane.

2 Complaint was lodged by Banwarilal Shyamlal Gaud, a businessman. It is alleged in the complaint that the complainant is in business of steel rod and channels. On 25th August, 2018, he

received an order from one Kalyan Steel, Andheri for supply of 22820 kilogram iron bar. Accordingly, he placed an order with Guardian Steel, Wada and made the payment through bank account. thereafter, he informed the driver to deliver the said goods to Kalyan Steel, Andheri. Accordingly, the driver Shivbahadur reached Wada to procure the goods from Guardian Steel. At about 5:00 a.m., the said driver informed him about the same. On 26th August, 2018 at about 5:30 a.m., the complainant received a phone call from Ganeshpuri Police Station and he was informed that driver Shivbahadur was selling the goods from the Tractor to one Kishor Patil and Rupesh Patil. It is also alleged that the accused had fled away from the place of incident. On the basis of the information received by the police and after ascertaining the aforesaid fact, FIR was lodged with the said police station.

3 It is submitted by the learned counsel for the applicant that he is not the proprietor, partner or owner of M/s.Shree Ambika Traders, and the sole proprietor of said firm is co-accused Kishor Patil. Applicant is acquainted with him and helps in his spare time. It is submitted that the FIR was lodged on the basis of hearsay information received by the complainant. He

has no personal knowledge of the offence committed by the accused. It is submitted that the goods were lying at the scene of the offence and nothing has been recovered from the applicant. It is submitted that the complaint was lodged by stating that the Tractor was driven by driver Shivbahadur for delivery of iron bars from Wada to M/s.Kalyan Steels, Andheri. However, subsequently, police has arrested Rajaram Gaud and it is alleged that Rajaram and Shivbahadur are alleged to be drivers of the said Tractor. It is submitted that the complainant ought to have named Rajaram Gaud if he was driver of the Tractor in the FIR. Prosecution in order to cover up the said lapses, has now come out with a story that both were drivers of the said vehicle. It is submitted that the applicant has been falsely implicated in this case on the basis of his acquaintance with the co-accused Kishor Patil.

4 Per contra, learned APP submitted that there is sufficient evidence to show the involvement of the applicant in the said crime. It is submitted that the iron bars ought to have been delivered to the destination directed by the complainant. However, at about 3:00 a.m., at the unusual place the vehicle was stopped and the goods were about to be sold to the accused persons. It is submitted that the statement of constable who had

identified the applicant and Kishor Patil being present at the place of incident has been recorded by the police. It is submitted that the panchanama of the scene of offence including the Tractor and the goods lying therein is also recorded. It is further submitted that the applicant is also involved in another case, which is registered vide C.R.No.270 of 2017, for an offences punishable under Section 406, 411 of IPC. Learned counsel for the applicant submitted that nothing was recovered at the instance of the applicant in the present case and even the earlier case was identical wherein it was alleged that the applicant and other accused had disappeared from the place of incident. It is submitted that custodial interrogation of the applicant is not necessary.

5 I have perused the FIR and the investigation papers. The Tractor was loaded with steel rods, which were being tried to be sold to the accused by the driver of the said vehicle. Accused was found dealing with the said transaction and on being questioned they ran away from the place of incident. Panchanama was recorded. One of the panch whose statement was recorded has identified the accused as the person at the scene of offence and had disappeared immediately after police had reached the

said place. It is also pertinent to note that the applicant and the co-accused Kishor Patil were involved in similar case, which was registered vide C.R.No.270 of 2017, for the offences punishable under Sections 407 and 411 of the IPC. Learned APP has also pointed out that the inquiry under Section 41-D of Cr.P.C. was also initiated against the applicant on 7th February, 2017 and 21st February, 2017. In the light of the aforesaid circumstances, I do not find that the applicant has made out case for grant of anticipatory bail. Hence, this anticipatory bail application is rejected.

(PRAKASH D. NAIK, J.)