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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.206 OF 2019

Dr.Pramod Tukaram Borghare ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Mr.Adwait Bhonde for the applicant.

Mr.A.A.Palkar, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 23, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. In crime No.1185/2018 for offence punishable under sections 406 and 420 read with 34 of the Indian Penal Code registered with Pimpri police station, Pune, the applicant is seeking pre-arrest bail.

3. The prosecution case is, the present applicant along with co-accused Raya Bhosale, in the crime in question has assured the complainant that he could do business of pharmaceuticals in a

newly constructed hospital and accepted deposit of Rs.46,85,000/-. Since neither the business was provided nor the amount was refunded, the differences arose between the parties and the same was settled by a deed dated July 26, 2018 in which the present applicant has assured to hand over cheques for refund of the deposit which was accepted. The first cheque was dishonoured. As such, the offence in question.

4. Learned counsel for the applicant submits that in the given set of circumstances, custodial interrogation of the applicant is not warranted as the dispute is arising out of refund of security deposit by landlord to tenant. According to him, even if the cheque issued to the applicant is dishonoured, the applicant can be proceeded against under the provisions of section 138 of the Negotiable Instruments Act, 1881. He would then urge that there was no privity of contract between the applicant and the complainant. He submits that in this background, the custodial interrogation is not warranted.

5. Learned APP submits that there is sufficient material on record to infer *prima facie* involvement of the applicant in the offence in question.

6. From the record, it depicts that the applicant and co-accused has accepted an amount of Rs.46,85,000/- allegedly towards deposit as the complainant entered into agreement for managing pharmaceutical shop in the property of the applicant.

7. It appears that pursuant to the settlement deed dated July 26, 2018 entered into between the complainant and the present applicant in which the applicant had assured repayment of the entire amount of deposit to the complainant and so as to honour the terms of the settlement, the applicant had issued in all four cheques of which the first cheque for an amount of Rs.10 lakhs is already dishonoured. The perusal of contents in complaint and the terms of settlement deed takes this Court to the conclusion that the relation between the complainant and the applicant are some thing more than landlord and tenant relationship.

8. This Court so as to test the *bona fides* of the applicant had called upon him to deposit an amount of Rs.25 lakhs as the second cheque is for the amount of Rs.15 lakhs dated January 26, 2019 which was due at the end of this week encashment of which is also not assured.

9. The applicant is non committal about the payments. It

is noticed from the conduct of the applicant as reflected in the F.I.R. of promising substantial pharma business in an hospital to pharmaceutical firm of complainant. The applicant has accepted huge deposit of Rs.46,85,000/- from the complainant and acknowledging the receipt of the same, he has also assured to refund the same. However, till date has not honoured commitment made.

10. In the aforesaid background, the very ingredients of section 406 and 420 of the Indian Penal Code are *prima facie* satisfied. That being so, there is *prima facie* involvement of the applicant in the crime in question. Hence the application is rejected.

(NITIN W. SAMBRE, J.)