

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

ANTICIPATORY BAIL APPLICATION NO. 420 OF 2019

Vipul Pravindhand Parekh	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Ashok M. Sarogi for the applicant.
Mr. R.M. Pethe, APP for the Respondent-State.
Mr. Karan Singh B. Rajput for the intervenor.
Mr. V.R. Bhosale, Police Inspector, Pydhoni Police Station.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 15th FEBRUARY, 2019.**

P.C.

1. This is an application for bail in connection with C.R. No. 20 of 2019 registered with Phydhoni Police Station for the offence punishable under Sections 409, 420, 406, 506 (2) read with 120(B) of Indian Penal Code. First Information Report was lodged at the instance of the company's name "Indian Chemical Corporation". It is alleged that chemicals were supplied to the applicant and in respect to that post dated cheques were issued by the applicant. Subsequently payments in respect to the cheques were stopped.

2. Applicant had preferred an anticipatory bail application before the Sessions Court which has been rejected. Hence, the applicant has approached this Court seeking relief under Section 438 of Code of Criminal Procedure. Learned counsel for the applicant submitted that the dispute is purely of civil nature. The Investigating Machinery is pressuring the applicant to settle the matter with the complainant. Complaint mentions that initially the payments were made by the applicant and there was alleged default in making the payments towards the purchase of the chemical goods. It is further submitted that the applicant had received the complaint with regards to the quality of the goods which were supplied by the applicant to their customers and hence the applicant had not received the payments towards the same. Applicant therefore issued notice making grievance in that regard. It is further submitted that applicant was being harassed and he has filed two suits before the Civil Court which are pending. Applicant was subjected to ill-treatment at the hands of police and hence he had preferred an application before the Sessions Court, stating that his advocate may be allowed to remain present during the interrogation. The offences as alleged in the First Information Report are not made out. It is further submitted that civil

transaction has been converted into criminal prosecution. Applicant is relying upon the certificate of analysis issued by CERA Laboratories regarding quality of goods.

3. Learned APP submitted that the accused had dishonest intention from the inception. Goods were delivered to him during the period from 2nd August, 2018 to 16th November, 2018 were about 11 consignments. Applicant had received the goods. False defence has been raised by the applicant that inferior quality goods were supplied to him. Learned counsel for the applicant however submitted that goods were delivered to him on 16th November, 2018 and said goods were of low quality, therefore he had refused to make payment. Learned APP submitted that applicant was called upon to give the details about the goods which were supplied by him to his customers and the complaints from customers with regards to the quality of goods. However, applicant had refused to provide information. It is submitted that inspite of receipt of goods, false claims are made that goods are of inferior quality. Applicant had no intention to make payment and instructions has been given to the bank for stop payment.

4. Learned counsel for the intervenor reiterated the submission of learned APP. It is submitted that the amount in respect to the

transaction which are subject matter of the present First Information Report are not yet received by the complainant. It is further submitted that no other complaint has been received from any customers with regards to the quality of the goods from the batch which is subject matter of the previous proceedings. It is submitted that certificate of analysis was received with regards to the quality of goods and thereafter goods were delivered. It is submitted that applicant has filed a civil suit claiming reliefs in the nature of injunction restraining the complainant from entering into the office of the applicant and also calling the applicant as defaulter. Learned counsel for the applicant however submitted that in the said proceedings applicant has been directed to approach the police machinery with regards to his grievance. Learned counsel for the applicant submitted that transactions were executed with the complainant since last two years and payment were made which shows that the dispute is of civil nature. Learned counsel for the intervenor however submitted that applicant in similar transaction has also initiated civil proceedings to give the colour of civil dispute to the transaction.

5. I have perused the first information report and the documents which are annexed to this application. First

Information Report depicts that the goods were supplied to the applicant. Defence of the applicant is that subject goods which were supplied by him to his customers were of inferior quality and that customers have objected in that regard and refused to make payment. However, no details of such complaints are forthcoming. Admittedly, the goods were delivered to the applicant and the cheques were issued by the applicant. Mere filing of suit or issuance of notice cannot absolve the applicant from liability and the dispute cannot be claimed as civil transaction. Apparently, it appears that filing of suit and issuance of notice is afterthought. Complainant has not received any payment in respect to the goods which are delivered from 2nd August, 2018 to 16th November, 2018. Considering the aforesaid circumstances and factual matrix of the case, no case for grant of anticipatory bail is made out. Hence, anticipatory bail application is rejected.

(PRAKASH D. NAIK, J.)