IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.971 OF 2020

1) Madhukar s/o Tulshiram Ghotkar
and another. = **APPLICANTS**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.GJ Kore,Advocate for Applicant/s
Mr.AM Phule,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 7th December, 2020.

PER COURT:-

1) Present application has been filed by the original accused Nos.1 and 2 for getting anticipatory bail, under Section 438 of Code of Criminal Procedure, as they are apprehending their arrest in connection with Cr.No.06 of 2020 registered with Lohara Police Station, Dist. Osmanabad, for the offence punishable under Section 420 r/w.34 of Indian Penal Code.

2) Heard learned Advocate Shri. G.J.Kore for the applicants and learned APP Shri. A.M. Phule for the State.

3) It has been vehemently submitted on behalf of applicants that the First Information Report lodged by one Balaji Surwase. He contends that he runs a building material shop at Jalkot and

he is also sub-dealer of Sangameshwar Cement Agency. He sells cement as per order. One person placed an order for 400 gunny bags of cement on 02-01-2020, which was to be delivered at Lohara. He disclosed his name as Anil Surwase. The price was fixed at Rs.270/- per bag. He gave an advance of Rs.5,000/- and the informant issued him a receipt. They exchanged mobile numbers. Informant had then sent gunny bags as per the order through truck on 03-01-2020. Prior to that, he had talked to that person on the given phone number and he told that the material should be unloaded at Laxmi Steel Traders in Lohara. It was instructed by informant to the labour that he should get the remaining amount of bags and then unload the bags. After 300 bags were unloaded, there was talk between informant and his labour, who informed him that the person there is telling that remaining 100 bags should be unloaded then he would pay. Informant made phone call to that person, but that person did not respond. When again informant contacted his labour, then it was told to him that the shop owner is conveying that said Anil Survase has taken Rs.1,08,000/- from him towards the price of cement bags. Informant had then raised suspicion and went to Lohara. He made inquiry with owner of Laxmi Traders, who, in turn, told that they had paid the amount to Deshmukh, who has done the booking of the material. The informant told that, that person is Surwase and he had booked the material with him. The informant then demanded amount for the 300 gunny bags and at that time it was told to him that the material has been purchased from one Pashu Khutepad. Khutepad told that he had booked the material from Lakhan Deshmukh. The Informant was not paid the price of the bags nor bags were returned to him. Therefore, he felt cheated in respect of 300 gunny bags of cement worth Rs.1,08,000/-. Hence he lodged the report.

4) It has been further submitted on behalf of the applicants that present applicants themselves are the victims of the crime. They have paid the cost of the material to said Lakahan Deshmukh. There was no direct contact or placing of order by present applicants. The incident had taken place on 03-01-2020; yet FIR came to be filed on 06-01-2020. There is no explanation for the delay. Ingredients of offence under Section 420 of Indian Penal Code are not at all attracted. Physical custody of the applicants is not required. They deserves to be released on bail and they are ready to abide by any terms.

5) Per contra, learned APP strongly opposed the application and submitted that the investigation is still pending. The present applicants have received the material. The said goods were owned by the informant. The price should be paid informant, but in spite of explaining all the things, they neither returned the material nor paid the price there for. This shows their intention to cheat. Now, the applicants are coming with a case that they had booked the material

through Lakhan Deshmukh. All the accused have acted with common intention and, therefore, physical custody of the applicants is required for interrogation.

6) At the outset, it will have to be noted that in cases of cheating and impersonation, or cheating by impersonation; facts are required to be properly considered. Here, the informant has specifically stated that the person, who had placed order, had represented to him that he is Anil Surwase. Phone numbers were also exchanged. After the material was made ready for delivery, he had contacted Anil Surwase and got the destination for unloading the material. Even advance amount was paid, but, at that time informant could not realize that he is being cheated. He had given instruction to labour to get the balance amount of price and unload the material. 300 gunny bags were unloaded, but, thereafter the problem started. He went to the said place personally and explained everything. Present applicants have not denied that they have received 300 bags. According to them, they had paid the amount to one Lakhan Deshmukh. It is surprising that they are claiming to have paid full amount in advance. When they had not received the entire material, it is hard to believe that they have paid that amount. No evidence supporting this contention has been filed. The material, which was received by them, was owned by the informant. Under such circumstance, investigation is definitely required for which physical custody is necessary.

7) Taking into consideration the aforesaid facts of the case, the applicants are not entitled to get bail under Section 438 of Code of Criminal Procedure. The application deserves to be rejected. Accordingly, it is rejected.

(SMT. VIBHA KANKANWADI,J.)

BDV