

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1486 OF 2019

Harshalkumar s/o Vasantrao Survade ... Applicant

Versus

The State of Maharashtra ... Respondent

.....
Mr. S. S. Gangakhedkar, Advocate for applicant.
Mrs. R. P. Gaur, APP for respondent – State.

.....
WITH
CRIMINAL APPLICATION NO.4153 OF 2019
IN ABA/1486/2019

Yunus Abdul Tadvi ... Applicant

Versus

1. Harshalkumar Vasantrao Surwade
2. State of Maharashtra ... Respondents

.....
Mr. A. J. Patil, Advocate for applicant – original informant.
Mr. S. S. Gangakhedkar, Advocate for respondent No.1.
Mrs. R. P. Gaur, APP for respondent No.2 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 08-12-2020

ORDER :

. Criminal Application No.4153 of 2019 filed by the original informant seeking permission to assist learned Additional Public Prosecutor is hereby allowed and disposed of.

2. Anticipatory Bail Application No.1486 of 2019 has been filed by the original accused for getting bail under Section 438 of the Code of Criminal Procedure, as he is apprehending his arrest in connection with Crime No.81 of 2019 registered with Yawal Police Station, Tq. Yawal, Dist. Jalgaon for the offences punishable under Section 420 and 468 of the Indian Penal Code.

3. Heard learned Advocate Mr. S. S. Gangakhedkar for applicant, learned APP Mrs. R. P. Gaur assisted by learned Advocate Mr. A. J. Patil for respondent.

4. It has been vehemently submitted on behalf of the applicant that the applicant is a businessman and he is carrying out business under name and styled as Tuljai Automobiles. He deals in sale of Tractor and other allied equipment required for agriculture. Applicant has contended that one Yunus Abdul Tadvi (Informant) expressed his willingness to purchase the Tractor and thereby entered into an agreement in furtherance of their talks. At the time of agreement, said Tadvi had paid amount of Rs.10,000/- on 14-11-2015. It was also agreed that he would pay Rs.15,000/- on 18-11-2015 and the balance amount would be paid on 15-12-2015. The cost of Tractor was Rs.6,51,000/-. The agreement was reduced into writing on bond paper of Rs.100/-. According to the applicant, the said Tadvi had not paid the entire amount, but paid only Rs.1,15,000/-. He assured that the balance amount of Rs.5,00,000/- would be

made available by way of loan. In spite of repeated request made by the applicant, the informant had not given the balance amount. Therefore, the applicant had made a complaint to the MIDC Police Station, Jalgaon on 27-09-2017. When no action was taken by police, the applicant lodged private complaint in the Court of Chief Judicial Magistrate, Jalgaon in May, 2018 bearing Criminal Miscellaneous Application No.347 of 2018. He had prayed for direction of investigation under Section 156(3) of the Code of Criminal Procedure. That prayer was rejected, however, the learned Judicial Magistrate First Class, Jalgaon by order dated 8-12-2018 issued process by treating said complaint/application as Regular Criminal Case No.347 of 2018 against the informant for the offences punishable under Section 406, 420 read with Section 34 of Indian Penal Code. The wife of said informant is also co-accused. Informant - Yunus Tadvı challenged the said order of issuing process against him by way of Criminal Revision Application No.70 of 2019. That criminal revision application came to be dismissed by the learned Additional Sessions Judge, Jalgaon on 09-08-2019.

5. Learned Advocate for the applicant further submitted that after the decision by the learned Additional Sessions Judge, Jalgaon, the said Tadvı has lodged private complaint before the Judicial Magistrate First Class, Yawal bearing Criminal Miscellaneous Application No.62 of 2019 against the applicant – accused contending that the applicant has committed offence punishable under

Section 468 and 420 of Indian Penal Code. The learned Magistrate allowed the said application and sent the case for investigation under Section 156(3) of the Code of Criminal Procedure by order dated 01-04-2019 and under such circumstance, the said offence has been registered with Crime No.81 of 2019 against the applicant on 25-06-2019. In spite of having knowledge about issuance of process against him, the informant kept silence for long period. There is no question of physical custody of the applicant required for the purpose of investigation. All these aspects were not considered by the learned Sessions Judge while rejecting the application under Section 438 of the Code of Criminal Procedure filed by the present applicant before him. Prompt actions have been taken by the present applicant and it is, in fact, the applicant, who has been cheated by the informant. The matter is then *sub judice* before the Trial Court and therefore, the applicant deserves to be released on bail.

6. Per contra, learned APP assisted by learned Advocate for the original informant submitted that when the allegation against the present applicant is that he has forged certain documents, then definitely custody is required. Though the price of the Tractor was less, yet, it has been shown on a higher side on the documents by the present applicant who had presented those documents in the bank for loan transaction.

7. At the outset, it is to be noted that the transaction involved in both the private complaints is same. A Tractor was purchased by informant from the

shop of the present applicant. As regards the agreement dated 14-11-2015 is concerned, there is no dispute. It was the present applicant, who had approached the police first, when he felt that he has been cheated and the amount has been misappropriated by the present informant. The complaints were made by the present applicant on 27-09-2017 to Police Inspector, M.I.D.C. Police Station as well as Deputy Superintendent of Police, Jalgaon. When no cognizance was taken, he filed private complaint before learned Judicial Magistrate First Class in May, 2018 vide Criminal Miscellaneous Application No.347 of 2018. It appears that order of issuing process against the informant and his wife came to be passed on 18-12-2018 for the offences punishable under Sections 406, 420 read with Section 34 of Indian Penal Code. The informant had filed revision before the learned Sessions Judge on 25-04-2019 and it came to be dismissed by the learned Additional Sessions Judge on 09-08-2019. The informant has filed revision on 25-09-2019, prior to that date on 25-03-2019, he filed private complaint before Judicial Magistrate First Class alleging that the present applicant has committed offence punishable under Section 468 and 420 of Indian Penal Code. In his complaint, the informant stated that he had filed the complaint application to police on 25-05-2016 itself. Interesting point to be noted is that he has then filed the private complaint after three years. There appears to be substantial delay on the part of the present informant to approach the learned Judicial Magistrate First Class, Yawal. It is the present applicant who

has taken the action first. Conduct of the informant is definitely required to be taken into consideration. If we consider the say, that was filed by the police opposing the anticipatory bail application filed by the present applicant, then they are very much in general. It is tried to be contended that though in the crime price of the Tractor was quoted as Rs.6,51,000/-, yet, in the bank, the accused has presented quotation in the name of complainant to the tune of Rs.8,80,000/- and, therefore, the informant says that he has been cheated. The documents appear to be with the bank and for that purpose, physical custody of the applicant is not required. Therefore, the application deserves to be allowed. Hence, the following order :-

ORDER

1. Anticipatory Bail Application No.1486 of 2019 stands allowed.
2. The order passed by learned Additional Sessions Judge, Bhusawal in Criminal Bail Application No.557 of 2019 dated 18-11-2019 is hereby set aside. The said application stands allowed.
3. The ad-interim protection, granted by this Court earlier to applicant vide order dated 27-11-2019, is hereby confirmed and made absolute. In the alternative, in the event of arrest of the applicant - Harshalkumar s/o Vasantrao Survade in connection with Crime No.81 of

2019, registered with Yawal Police Station, District Jalgaon for the offences punishable under Sections 420, 468 of Indian Penal Code, he be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.

4. The applicant shall not tamper with the evidence of the prosecution in any manner and shall cooperate with the investigation.
5. The applicant shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m. till 09-03-2021 or filing of charge-sheet, whichever is earlier.

[SMT. VIBHA KANKANWADI, J.]

scm