

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2263 OF 2019

Rajaram Champalal Bhutada

Applicant

versus

The State of Maharashtra

Respondent

Mr.Yashpal M. Thakur for applicant.

Mr.S.H.Yadav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th March 2020

PC :

1. The applicant is seeking anticipatory bail in connection with CR No.486 of 2019 registered with Shivaji Nagar Police Station, Kolhapur, under Sections 406, 409, 420 r/w 34 of Indian Penal Code.

2. The FIR is lodged by one Omprakash Rajkumar Biyani who was proprietor of M/s.Riddhi Siddhi Textile. It is the case of complainant that he had sold some fabric to one Vishalbhai Patel, proprietor of Rahil Textiles. The present applicant had acted as a broker in the transaction. This fabric was sent to the purchaser on 1st April 2017 and 31st March 2017. The fabric was valued at Rs.37,52,227/-. The main accused Vishalbhai did not make payment. The first informant realized that he was cheated as main accused never intended to make that payment. Therefore, he approached to the Court of Judicial Magistrate, First Class, Ichalkaranji seeking direction for investigation u/s 156(3) of Cr.P.C. The learned Magistrate rejected the application. Thereafter the informant approached the Court of Sessions and pursuant to the

order of Sessions Court, the learned Magistrate directed the Police Officer to investigate into the allegations.

3. Learned advocate for applicant submitted that the complainant had filed private complaint because police have refused to take cognizance of his complaint. The said complaint was filed before the Court of Judicial Magistrate, First Class, Ichalkarangi. Prayer for directing investigation u/s 156(3) of Cr.PC was refused by order dated 3rd April 2019. While refusing the said relief, the Court had observed that transaction was executed in 2016-17 and the complaint was filed after a period of about two years. The complainant thereafter preferred revision application before Sessions Court and by order dated 27th August 2019 the Sessions Court had directed the learned Magistrate to direct concerned Police Station to investigate the case u/s 156(3) of Cr.PC and submit report. Pursuant to the said order the FIR was registered and investigation proceeded. Learned counsel submitted that role ascribed to the applicant is of broker. Assuming the transaction to be true, there is no criminal element involved in it, the transaction being of commercial.

4. Learned APP submitted that the goods were delivered to the co-accused at the instance of applicant. The co-accused had also preferred application for anticipatory bail. However, during pendency of the said application he has expired.

5. It is pertinent to note that the dispute relates to delivery of raw material. Undisputedly substantial payment was made to the complainant to the tune of Rs.37,52,227/-. The applicant had allegedly acted as broker. Considering this, the applicant was

granted interim protection by order dated 16th October 2019. The applicant has complied the directions of reporting the Investigating Officer stipulated in order dated 6th February 2020 and he has appeared before the Investigating Officer on 13th and 14th February 2020.

6. In the aforesaid circumstances the applicant need not be subjected to custodial interrogation and the case for grant of relief under Section 438 is made out. Hence, I pass following order :

ORDER

- (i) Criminal Anticipatory Bail Application No.2263 of 2019 is allowed and disposed of;
- (ii) Interim order dated 16th October 2019 stands confirmed;
- (iii) In the event of arrest of applicant in connection with CR No.486 of 2019 registered with Shivaji Nagar Police Station, Kolhapur, the applicant be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(PRAKASH D. NAIK, J.)

MST