

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LD-VC-CRIMINAL APPLICATION [ABA] NO. 390/2020

Gajanan Balkrushna Ingle

-VERSUS-

State of Maharashtra

WITH

LD-VC-CRIMINAL APPLICATION [ABA] NO. 319/2020.

Kiran Gajanan Ingle

-VERSUS-

The State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.M. Vaishnav, Advocate for the Applicants.
Shri S.S. Doifode, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 11, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Though both bail application arises out of separate crimes, the applicants are same and nature of transactions is exactly similar, hence for the sake of convenience, they are taken together for disposal.

3. Applicant nos. 1 to 5 of Criminal Application No.319/2020, who are also applicant nos. 2 to 6 in Criminal

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Application No.390/2020, are apprehending their arrest in connection with two similar crimes bearing Crime Nos.53/2020 and 92/2020 registered at Buldana (Rural) and Amdapur Police Station respectively.

4. So far as, Crime No.53/2020 (Criminal Application No.319/2020) is concerned, it was registered at the instance of report dated 13.03.2020 lodged by an agriculturist namely Ashok Vishvasrao Jeughale, relating to offence punishable under Sections 409, 420 read with 34 of the Indian Penal Code. It is registered against applicants and one Gajanan Balkrushna Ingle. Precisely, it is alleged that on 15.02.2019, applicants along with Gajanan Ingle, met the informant and had purchased certain quantity of Soybean and pulses worth Rs.6,55,000/-. However, despite assurance, the price was not paid for which a report of criminal breach of trust and cheating was lodged. The informant himself has stated that in past, during the year 2016-2017 equally the applicants along with Gajanan Ingle had purchased food-grains for which they had appropriately paid. However, for the purchase dated 15.02.2019 the price was not paid and therefore the grievance.

5. In Crime No.92/2020 (Criminal Application No.390/2020) one another agriculturist namely Ashok Kamble lodged report of similar nature against the same applicants along with Gajanan Ingle for criminal breach of trust due to non-payment

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of price of sold goods. In his exhaustive report, the informant stated that since last 15 to 16 years, he was well acquainted with co-accused Gajanan Ingle due to business transaction. In the year 2016, 2017 and 2018 certain quantity of grain was purchased by Gajanan Ingle for which the informant was paid. On 22.02.2019, the applicants along with Gajanan Ingle purchased 142 qtl. and 33 qtl. of Soybean, however, the entire price was not paid. It is stated that the said grain was worth Rs.5,15,000/- out of which only the amount of Rs.3,52,000/- has been paid. Despite repeated demand the balance amount of Rs.1,63,000/-, was not paid. The informant added that on inquiry, he learnt that applicants have similarly purchased food-grain from several agriculturists, but they were also not paid. As such, the aggregate amount of unpaid goods is near about Rs.52,00,000/-. In fact, an amount of Rs.1,63,000/- was due to the informant and rest to others.

6. The reading of report discloses that co-accused Gajanan Ingle is the main person at whose instance transaction was entered. The role assigned to applicants is that they being family members and kins of Gajanan, they assisted Gajanan Ingle in lifting and transporting the goods. There is reference of applicant Tejrao that while taking the goods has made entry in the register and paid partial amount.

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7. It is to be made clear that co-accused Gajanan Ingle was arrested and after facing custodial interrogation, he was released on bail by learned Sessions Court in both the crimes. Though, initially he was applicant no.1 in Bail Application No.390/2020, however, due to subsequent even of his arrest, his bail application came to be withdrawn. Thus, both applications are pertaining to apprehension of all the associates of Gajanan Ingle who accompanied Gajanan Ingle, physical lifted the goods from the informant, took entries, kept the account etc. After reading both the First Information Reports prima facie, I am unable to find out any allegation against these applicants to suggest that they have dishonestly induced the informant or other agriculturists and by giving false promise had lifted the food-grain.

8. The learned counsel for the applicants has submitted that it is simple contract of civil nature which has been coloured as criminal offence only for non-payment of price of sold goods. The careful reading of both First Information Reports disclose that the incident in question was not isolated but for proceeding three years, the applicants along with main accused Gajanan Ingle had purchased food-grain of huge quantity and paid the price. The said admitted transaction helps to some extent the applicants to negate the submission that there was deceitful intention while lifting the goods.

9. Pertinent to note that in Crime No.53/2020, the goods were purchased on credit on 15.02.2019 whilst First Information Report was lodged on 13.03.2020 i.e. after a period of one year. Likewise, in Crime No.92/2020 goods were purchased on credit on 22.02.2019 whilst First Information Report was lodged on 06.03.2020 i.e. after a period of one year. Perhaps, the probable reason appears that the seller had faith and it being routine no action under criminal law was initiated at earlier point of time. In order to attract the offence of criminal breach of trust, there must be dishonest intention at the inspection that too required to be demonstrated from the allegations.

10. The learned counsel for the applicants would submit that though the transaction has involved huge amount, however, that cannot be criteria while deciding bail. In support of said contention, he relied on the decision of Hon'ble Supreme Court in case of **Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40**. He took me through paragraph Nos. 21, 29, 39, and 40 of the judgment to impress the general propositions and consideration which are to be adhered while deciding the bail. The learned counsel for the applicants would submit that mere non-payment or under payment of the price of sold goods by itself does not amount to the offence of cheating or criminal breach of trust.

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In this regard, he relied on the decision of the Hon'ble Supreme Court in case of **Vir Prakash Sharma Vs. Anil Kumar Agrawal and Another (2007) SCC 373**.

11. Likewise, he further relied on the decision of Hon'ble Supreme Court in case of **Vesa Holdings Private Limited and Another Vs. State of Kerala and Others (2015) 8 SCC 293**. In said case, the Hon'ble Supreme Court reiterated the settled position that every breach of contract would not give rise to an offence of cheating and only in those cases, breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at initial stage. Mere failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out.

12. In order to constitute an offence of criminal breach of trust or cheating, the dishonest intention is key ingredient which has to be established. Even, mere representation is not sufficient but the adequate mens rea about dishonest intention is an integral part of the offence. Material placed on record prima facie does not

disclose dishonest intention that too on the part of present applicants who were associates of the main accused Gajanan Ingle.

13. Perusal of reply/affidavit shows that, one another offence was registered against applicant at Sakharkheda Police Station. It is submitted that in said crime also, pre-arrest bail was granted to the applicants. Though, it is argued that the huge hard earned money of agriculturists has been involved in the crime, however, that can not be a sole reason to curtail the liberty of the existing applicants. It reveals from record that the main accused Gajanan Ingle who was preparator of the transaction had already undergone police custody but nothing was recovered. The role of applicant appears to be of assisting Gajanan Ingle in collecting the food-grain and nothing else. Moreover, it reveals that in past transaction, the entire price was paid to the agriculturists. This time also, in Crime No.92/2020 major amount was paid, but, only Rs.1,63,000/- has remained. Though, the names of several agriculturists are given, however, no specifications about their transaction or any past purchase has been stated.

14. Considering the limited role of applicants, prima facie absence of material to disclose dishonest intention on the part of applicants, arrest of main accused Gajanan Ingle and having regard to the peculiar facts, the applicants can be released on pre-arrest bail by imposing certain conditions.

15. At this juncture, it is pointed out that as per directions issued while granting interim protection by this Court in Crime No.53/2020, the applicants have attended police station which is also conceded in the reply/affidavit. In another Crime No.92/2020, the applicants were never called for interrogation at all. The investigation is still going on, hence, they can be directed to facilitate investigating agency by giving attendance. Needless to say that above observations are drawn only on prima facie basis which will have no bearing on the merits of the matter. In view of above both applications are allowed in following terms:

(i) In the event of arrest of applicants namely Kiran Gajanan Ingle, Ranjana Gajanan Ingle, Arun Devsingh Pawar, Krushna Devsingh Pawar, Tejrao Narayan Sarode in Crime No.53/2020 registered at Police Station Buldana (Rural) and Crime No.92/2020 registered at Amdapur Police Station, District Buldana, relating to offence punishable under Sections 409 and 420 read with 34 of the Indian Penal Code, they be released on bail on their furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount each.

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(ii) Applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(iii) Applicants/accused shall provide their residential address and cell number to concerned Investigating Officer and shall not change their place of residence without prior intimation to the concerned Investigating Officer.

(iv) Applicants/accused shall attend concerned Police Station, Buldana (Rural) on every Monday in between 10.00 a.m. to 12.00 noon and shall attend Amdapur Police Station, District Buldana on every Thursday between 10.00 a.m. to 12.00 noon till filing of the charge-sheet.

16. Criminal Applications are accordingly disposed of.

17. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE