IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.270 OF 2020
with
CRIMINAL APPLICATION NO.913 OF 2020
&
CRIMINAL APPLICATION NO.795 of 2020

Sudhakar Bekal Valappil = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.RR Karpe, Adv. h/for Mr. SS Gangakhedkar,Advocate for Applicant;

Mr.SY Mahajan,APP for Respondent-State;

Mr.RS Deshmukh, Sr.Counsel i/b Mr.RD Raut, Adv. And Mr. MD Shinde, Adv. to assist APP;

with

ANTICIPATORY BAIL APPLICATION NO.266 OF 2020
with
CRIMINAL APPLICATION NO.914 OF 2020

Pandu Morimisetty s/o Venkatramanappa = **APPLICANT**

VERSUS

The State of Maharashtra **= RESPONDENT**

Mr.SD Tawshikar,Advocate for Applicant;

Mr.SY Mahajan,APP for Respondent-State;

Mr.RS Deshmukh, Sr.Counsel i/b Mr.RD Raut & DR Deshmukh, Adv. to assist APP.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 18/12/2020
PRONOUNCED ON: 18/01/2021

PER COURT :-

1. Criminal Application Nos.913/2020; 914/2020 and 795/2020 moved to assist APP in respective Anticipatory Bail Applications are allowed and disposed of.

2. Both the Anticipatory Bail Applications have been filed by original accused persons for getting pre-arrest bail, as they are apprehending their arrest in connection with CR No.4/2020 dated 10.01.2020 registered with Murud Police Station, District Latur for the offences punishable under Sections 406, 420 read with 34 of Indian Penal Code.

3. Heard learned Advocates and learned APPs assisted by learned Senior Counsel appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicants that perusal of the FIR and the facts around the contents of the FIR would

show that only civil remedy is available to the informant.

A. The learned Advocate representing the applicant in ABA No.266/2020 submitted that since it was a commercial transaction, the informant ought to have knocked the doors of the concerned Commercial Court, but instead of that, a private complaint was filed bearing RCC No.361/2019 before learned JMFC, Latur. In fact, the learned Magistrate was pleased to take cognizance of the complaint and recorded the verification of the complainant on 5.8.2019. However, surprisingly, a separate application was filed on 6.11.2019 in the said case by the complainant praying for passing an order under Section 156(3) of Cr.P.C.. That application came to be allowed erroneously by the learned Magistrate on 4.1.2020. In fact, since the learned Magistrate has exercised his power under Section 156(3) of Cr.P.C. erroneously, the registration of the offence, on the basis of the same, itself is illegal. Yet, as the FIR is now registered; perusal of the same would show that it is purely civil in nature. Custodial interrogation of the applicants is not at all required. The applicant never denied the transaction with the informant and his liability to pay the amount against the purchased goods. He had already issued a cheque in favour of the informant. The informant had also tried to encash the same, however, due to financial problems of the applicant, the said cheque came to be dishonoured. The informant could have lodged a complaint under Section 138 of The Negotiable Instruments Act, but he did not resort to for that remedy and filed the present case. Taking into consideration the FIR as it is, on its face value, it does not constitute the offence under Section 406 or 420 of IPC. The applicant is ready to abide by the terms of the bail and to cooperate with the investigation. The learned Advocate, therefore, prayed for release of the applicant on pre-arrest bail.

B. The learned Advocate representing the applicant in ABA No.270/2020, submitted that the present applicant has no concern with the transaction. The said transaction was between the company of the informant and accused No.1. The applicant is not beneficiary of any amount. It is alleged in the complaint that the present applicant had contacted the informant in December 2018 and represented that his company intends to purchase jaggery powder from the complainant. It is also alleged that the present applicant had entered into the negotiations and fixed the price of the product. The delivery of the goods is given to Sri Venkateswara Global Trading Pvt. Ltd and invoices have been raised as against that company, which is owned by original accused No.1. The present applicant was acting as coordinator between them and he has nothing to do with the further terms of the contract those might have been entered into between them. In fact, when the informant had made the communication to the present applicant regarding outstanding amount, he had sent e-mails to accused No.1 and insisted that the said price be paid. There was no intention on the part of the applicant to cheat the informant. Custodial interrogation of the applicant is absolutely not required and the dispute is surrounding the recovery of amount of Rs.1,99,04,375/-, for which it appears that accused No.1 had issued the cheque, which later on was dishonoured. At the most, the case is of pure and simple breach of contract of sale and does not constitute offence of criminal breach of trust or cheating. Consequently, the learned Advocate for the applicants canvassed for pre-arrest bail.

5. The learned Advocates for the respective applicants have relied on the following citations,

-. **In ABA 270/2020**

a) *Binod Kumar and Ors. Vs. State of Bihar & Anr. - AIR 2015 SC (Supp) 1446;*
b) *Dalip Kaur and Ors. Vs. Jagnar Singh and Anr. - 2009 AIR SCW 5117*;
c) *V.Y.Jose and Anr. Vs. State of Gujrat and Anr - AIR 2009 SC (Supp) 59*
d) *S.N. Palnitkar & Ors. Vs. State of Bihar & Anr. - AIR 2001 SC 2960*

. **In ABA 226/2020**

. *Blue Dart Express Ltd. Vs. The State of Maharashtra & Ors. -2011 (2) Crimes 46*

6. Per contra, learned APP, well assisted by learned Sr. Counsel Shri RS Deshmukh, instructed by advocate RD Raut and learned Advocate Shri MD Shinde, strongly objected both the applications. It has been submitted that the details of the transactions are given in the FIR and the complaint. The applicant in ABA No.266/2020, i.e. accused No.1, had paid only an amount of

Rs.80,75,550/-, out of the total consideration of Rs.2,75,00,000/- and amount of Rs.1,99,04,375/- was avoided. Further, he had also tried to have settlement and two Demand Drafts of Rs.50,00,000/- and Rs.1,00,00,000/- respectively drawn on State Bank of India, Shrinagar colony, Chennai, were handed over in view of the compromise. However it is then alleged on behalf of applicants that, when the parties went to State Bank of India, Latur branch, for verification of the Demand Draft, the Manager of the Bank viz. Vijay Nade and one unknown person, snatched those demand drafts. Such type of false reporting has been done by V.Ranjeet Charankumar and then the complaint has been given to Superintendent of Police, Latur on 14.2.2020. The amount is still with accused No.1 and those demand drafts have not been encashed. All has been done with the sole intention to cheat the informant.

7. The applicant in ABA No.270/2020 was, in fact, representing himself as representative of the company of accused No.1 and his e-mails would disclose that he had taken active part. Now, when

it comes to making the payment, it has been avoided on one or the other pretext. Though the transaction may disclose remedy in civil nature; yet it has a remedy under criminal law also. In order to get confidence, if some payment is made, it does not wash away the initial intention to cheat and, therefore, from the contents of the complaint when it was found by the learned JMFC that cognizable offence has been made out, he has passed the order of investigation under Section 156(3) of Cr.P.C. A thorough investigation is definitely required. So also as regards the said applicant- accused No.1, he is involved in three offences bearing CR No.29/2018 for the offences under Sections 420, 314, 120-B, 506 read with 34 of IPC; CR No.62/2019 under Sections 409, 420 and 506 of IPC and CR No. 100/2019, under Sections 409, 420, 506 read with 34 of IPC registered with Kothacheruvu police station District Ananthapur in Telangana State. The said criminal antecedents are also required to be considered. Custodial interrogation of both the applicant is required and, therefore, the learned APP prayed for rejection of both the applications.

8. At the outset, though in an anticipatory bail, we need not consider legality of the order dated 4.1.2020, under Section 156(3) of Cr.P.C., passed by learned JMFC below Exh.6 in RCC No.361/2019; yet it can be seen that the learned Magistrate has referred the judgment of the Hon'ble Supreme Court in *Criminal Appeal Nos.478-479 of 2017 dated 16.10.2019,* in the case of *Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujrat and Anr. – (2019) 17 SCC 1)*, which is a three-judge Bench decision and the relevant paras of the said decision have been quoted. Therefore, it cannot be said that the said order is without application of mind, thereby giving any advantage to the present applicants to seek anticipatory bail.

9. Now, turning towards the contents of the FIR, it can be seen that the allegations are, accused No.1 had approached to the informant through accused No.2 for supply of jaggery powder to informant's factory in December 2018. Thereafter, accused No.2 had visited the factory site and inspected the jaggery powder and it was represented that his company wants to buy 1,000 mt

of jaggery powder, which the complainant agreed to sell. After the amount was settled, it was agreed that the complainant would deliver the jaggery powder at the godown of Sri Venkateshwara Global Trading Pvt.Ltd. at Kothacheruvu. In view of the terms of the agreement, post-dated cheque for Rs.2,75,00,000/- was issued on 18.1.2019, drawn on Karnataka Bank Ltd., Rajendra Nagar branch, Hyderabad, in favour of the informant by accused No.1. Thereafter, the informant says that the delivery of the goods was made as agreed and the total price of the jaggery powder supplied was Rs.2,79,74,925/-. The complainant says that amount of Rs.80,75,550/- has been paid by the accused, however, the outstanding amount is of Rs.1,99,04,375/-. In spite of several attempts and communications, the accused has failed to repay and, therefore, the cheque was deposited, which was later on dishonoured. It is the say of the informant that the accused persons, in collusion with each other, induced the complainant to deliver the said amount of jaggery powder and thereafter fraudulently and dishonestly with common intention, cheated the complainant and thereby misappropriated the goods.

10. No doubt, there is definitely an element of commercial transaction in the facts of the case; yet when there is element of cheating and in spite of repeated attempts, followed by dishonor of the cheque, definitely it may give rise to a criminal remedy and, therefore, thorough investigation is required. Further development is also required to be looked into. As regards those Demand Drafts, which are stated to be given by the accused, as per the settlement, photo copies of which have been given, would show that the allegations have been leveled against the informant, who is the Director of the complainant, that he has snatched those demand drafts. If those demand drafts were meant for the informant, then why there should be a complaint on behalf of accused No.1 that the informant has snatched away those demand drafts. Therefore, this additional factor also prompts this Court not to exercise the discretion in favour of the applicants.

. As regards, accused No.2, i.e. applicant in ABA No.270/2020, various e-mails, those were exchanged and the contents of the complaint, would show that the said applicant had represented to the complainant that he is the office-bearer or authorized person of the company held by accused No.1. Therefore, his role is also then required to be checked, for which physical custody is required.

11. The ratio, laid down in decisions, relied on behalf of the applicants, referred to above, cannot be made applicable in this case, as the facts involved in the cited cases are different than the cases in hand. Further, when the Hon'ble Apex court has clarified the legal position, the decision of this Court in the case of *Blue Dart (cited supra)* will not be of any help.

12. Further, when this is a case discovering an economic offence, then the applicants do not deserve to be released on anticipatory bail in view of the observations made by the Hon'ble Apex court in the case of *Y.S.Jagan Mohan Reddy Vs.CBI – (2013) 7 SCC 439,* wherein, the Hon'ble Apex court has observed thus, -

> "…...Economic offences constitute a class apart and need to be visited with a

> different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

13. A reference can be made to the observations made by the Hon'ble Apex court in the case of In *P.Chadambaram Vs. Directorate of Enforcement – (2019) 9 SCC 24,* wherein the Hon'ble Apex Court has observed, - "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such

power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

14. In the said decision, the Hon'ble Apex court further observed thus, -

> "…….grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offence would definitely hamper effective investigation"

15. Taking into consideration the facts and circumstances of the present case; the material brought on record and the law laid down by the Hon'ble Apex court, as aforesaid, no case is made out for grant of anticipatory bail to the applicants. Both the Anticipatory Bail Applications, therefore, rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV

Later on :

16. After pronouncement of the order, learned Advocate Mr. Gangakhedkar, appearing in Anticipatory Bail Application No.270 of 2020 prays for continuation of the interim protection, as he intends to approach the Hon'ble Apex Court. Under such circumstance, the interim protection granted earlier to continue till four weeks from today only.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV