**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.310 OF 2021

**ANIL CHABILDAS CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA**
...
**Advocate for Applicant : Mrs.Rashmi S. Kulkarni
Public Prosecutor for Respondent: Shri D.R.Kale
Senior Advocate Shri R.S.Deshmukh to assist P.P.**
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**CORAM : MANGESH S. PATIL, J.
DATE : 26.04.2021**

P.C. :-

This is an application under Section 438 of the Cr.P.C. as the applicant is apprehending arrest in connection with Crime No.30/2021 registered with Bhusawal Bazarpeth Police Station, District Jalgaon for the offences punishable under Sections 420, 504, 506 of the I.P.C. and is seeking bail in the event of his arrest.

2] The substance of the allegations in the F.I.R. are to the effect that informant's husband is a Civil Engineer and Contractor by profession. They were well acquainted with the applicant. His brother is a Member of Legislative Assembly and Ex-President of the Municipal Council. He was contesting election for the seat of Member of Legislative Assembly in the year 2019 and was in need of money. He owns 5 shops from the ground floor of a Shopping Complex which he put to sale to raise money for the election. A friend of her husband by name Shri Tanaji Shantaram Patil acted as a middleman through whom he approached the informant. The applicant agreed to sell these 5 shops to the informant for a consideration of Rs.60,70,000/-. Since the applicant was in urgent need of money the entire amount of consideration was paid to him through 2 bank transactions. The applicant promised to immediately execute the sale deed and deliver possession. However, inspite of a receipt of money and execution of the sale deed, the applicant failed to turn up for registration of the sale deed. Even Tanaji Patil was present in the office of the Sub Registrar alongwith the informant and her husband but he failed to turn up. When he was contacted, he agreed to turn up but failed to remain present and consequently the registration could not take place. Thereafter, repeatedly he was requested to execute a registered sale deed but he failed. Notices were also sent to him but in vain. Notice was also issued to him by Sub Registrar concerned and still he failed to execute a registered sale deed. She realised that she was cheated by him and lodged the F.I.R. and the offence was registered. He is now apprehending arrest.

3] The learned advocate Mrs.Kulkarni for the applicant would vehemently submit that a pure civil dispute is now being draped into a criminal one without existence of any ingredient for constituting the offence of cheating. According to her accepting the allegations at their face value, at the most it would be a case of breach of promise, for which the remedy would lie with the Civil Court and for which the informant has already filed a Civil Suit.

4] The learned advocate Mrs.Kulkarni would then submit that the F.I.R. itself has been lodged belatedly sans any explanation for the delay. In fact it is a second attempt to set the criminal law in motion. She had already filed a private complaint before the learned Magistrate seeking a direction under Section 156(3) of the Cr.P.C. but could not obtain the direction and even her challenge to rejection in the form of a Revision was dismissed. It is thereafter that the present F.I.R. has been lodged. The criminal Courts having *prima facie* concluded that the dispute is primarily of civil nature, maintainability of the F.I.R. and the prosecution, if any, pursuant thereto apart, this is a fit case where the applicant deserves to be granted anticipatory bail.

5] The learned advocate would submit that admittedly the applicant is a politician and would be put to great loss in the event of his arrest in such a dispute. No criminality is involved. There is absolutely no material to show that since inception the applicant was intending to deceive the informant.

6] The learned advocate Mrs.Kulkarni then would take me through the defence of the applicant as is discernible from the written statement-cum-counter-claim filed by the applicant in the Suit of the informant for specific performance. She would submit that execution of the sale deed itself has been denied by him. It is his case that the signatures purporting to be that of his appearing on each page of the sale deed are forged ones. It is a pure case of money lending transaction. The applicant was in need of money and the informant had lent him and it was to be returned within 2 years in instalments. In view of such a specific stand of the applicant, when the dispute about genuineness of the sale deed/transaction itself is pending before the Civil Court, the present attempt is nothing but a short-cut resorted to by the informant and her husband as an act of arm twisting.

7] Lastly, the learned advocate would submit that receipt of money has never been denied by the applicant. He is ever ready and willing to repay it. This is what has been claimed by him in his counter claim. Even now this Court may put him to condition *inter alia* directing him to deposit the money. His custodial interrogation is not necessary. Being a politician, he is unlikely to jump the bail. He is ready to cooperate the Investigating Officer and the application be allowed.

8] The learned advocate would also point out as to how the applicant had promptly replied the notice issued by the informant dated 7/2/2020 and also the letter received from the Sub Registrar dated 13/1/2020.

9] The learned Public Prosecutor and the learned Senior Advocate for the informant would vehemently oppose the application. They would submit that the applicant having accepted the entire amount of consideration under the pretext of urgent need of money, for spending during election, has made the informant part with huge money. He executed the sale deed in presence of middleman Tanaji Patil but failed to turn up for its registration. These facts *prima facie* are sufficient to infer that since inception he had an intention to deceive the informant. The time gap between execution of the sale deed and the date on which it was to be registered is so short that such an inference can easily be drawn.

10] The learned Public Prosecutor would further point out that since inception even the middleman Tanaji Patil has vouched about genuineness of the transaction as is being averred by the informant and that is why under his own handwriting and signature, he has endorsed the contents of the notice dated 7/2/2020 issued by her to the applicant calling upon him to remain present for registration of the sale deed. Being an important witness to the transaction his statement has been recorded under Section 161 of the Cr.P.C and he has clearly supported the allegations in the F.I.R. Pertinently he has also vouched regarding actual putting of signatures on the sale deed by the applicant. At this stage, this much of material is sufficient to *prima facie* demonstrate involvement of the applicant in commission of the crime.

11] So far as the aspect of delay in lodging the F.I.R. and it being a second attempt to set the criminal law in motion, the learned Senior Advocate Mr.Deshmukh for the informant would point out that there is no bar in registering the crime by the police even though the Magistrate has refused to issue a direction under Section 156(3) of the Cr.PC. Besides, in fact the informant since inception was making an attempt of registration of the crime but because of the political influence of the applicant the machinery was loath. She had to approach various authorities, peoples representatives and even a Tribunal which entertains grievances against the police machinery. It is after such incessant pursuation that she could get the offence registered. The correspondence produced alongwith her application would demonstrate as to how much efforts she had to put in to see that the offence is registered. If such is the case, she cannot be blamed for the delay in registration of the crime. She cannot be made to suffer because of the laxity of the police machinery. Further these circumstances are not of much relevance as *prima facie* ingredients for constituting the offence of cheating can easily be made out.

12] The learned Public Prosecutor and the learned Senior Advocate then would point out that the applicant has been a highly influential person who has been involved in several crimes over a period of time. The list would go upto 25 crimes. In some of them he has been acquitted but others are still pending trial or investigation. The fact would demonstrate his nature and character and granting him protection in the form of anticipatory bail is certain to cause a serious prejudice to the efforts being put by the informant in setting the criminal law in motion. If he could thwart registration of the crime because of his influence, one can easily appreciate his influence in the society. There is every possibility of his tampering the witness particularly the middleman Tanaji Patil. The learned Public Prosecutor would submit that custodial interrogation of the applicant is highly necessary and the application be rejected.

13] The learned advocate Mrs.Kulkarni would submit a statement to the effect that out of 24 cases registered against the applicant, he has been acquitted except in 3 cases which are still pending either in the trial Court or in appeal against conviction. Being a politician, registration of number of crimes, particularly when he has been acquitted in most of them, should not be given much weight.

14] I have carefully gone through the papers of the investigation. As can be discerned, there is no dispute about the fact that the applicant did receive a huge sum of Rs.60,70,000/- at one go and even succeeded in withdrawing the entire amount at once. The dispute primarily is about the nature of the transaction, if it was a transaction of agreement of sale of the shops or a case of hand loan. Needless to state that the Civil Court is seized of the dispute and would reach its independent conclusion.

15] The question that needs to be addressed in the present matter is as to if *prima facie* there is some element of criminality as is being alleged by the informant.

16] The foremost circumstance at this juncture which weighs in favour of the informant is the fact that she has parted with a huge sum of money which the applicant withdrew at once. The transaction was witnessed by execution of sale deed wherein signatures purporting to be that of the applicant appear on each page of the sale deed. Most importantly, as is pointed out earlier, the middleman Tanaji Patil has not only endorsed about genuineness of the transaction by putting a note below the notice dated 7/2/2020, a receipt of which has been duly admitted by the applicant, but even in his statement under Section 161 of the Cr.P.C. he clearly supports the prosecution. At this stage this much of material clearly demonstrates *prima facie* that the applicant had received the money under the pretext of selling the shops to the informant and received huge sum by executing the sale deed.

17] It is also important to note that this transaction has taken place on 19/10/2019 and the document was placed before the Sub Registrar for registration on 30/10/2019 but the applicant failed to turn up. The period between these 2 dates is so short that one can certainly infer that since inception there must have been a dishonest intention on his part to deceive the informant in parting with money, which he succeeded, causing wrongful loss to her and wrongful gain to him.

18] In fact one need not delve much into the veracity or otherwise of the defence being taken by the applicant about the transaction being a case of home loan. However, even if one makes an attempt to appreciate it, one cannot but discard it at this juncture. If really it was a transaction of hand loan and if really he has some *bona fides*, as is being submitted by his learned Advocate, he would not have sat over the money for last more than 2½ years. His attempt to put an offer to deposit the money now needs to be looked at from this angle as well. If really he had some *bona fides* and it was a transaction of a hand loan, he would have certainly made an attempt to repay that money to the informant may be by transferring it in her bank account from which he had received it. There is absolutely no material to demonstrate that he ever made any such attempt during last 2½ years. Be that as it may, the fact remains that he received the entire amount of consideration, withdrew it at once, executed sale deed but failed to turn up at the office of the Sub Registrar, are the circumstances clearly indicative of his dishonest intention and attempt at cheating the informant.

19] True it is that there is delay in lodging the F.I.R. however, it is a matter which will have to be gone into by the trial Court. Still, the documents annexed to the application of the informant would clearly indicate that she all the while had made serious and genuine attempts to move the machinery towards registration of the crime. She had not only written the higher ups but even had to approach the Tribunal set up to hear the grievances against police machinery.

20] As far as the criminal antecedents are concerned, though the applicant now stands acquitted from most of the crimes out of 24/25 offences registered against him except 2, pending at the trial Court and one in the form of an appeal against the conviction in which his conviction is stated to have been stayed, the fact remains that these offences pertain to a period right from the year 1987 upto the present one. The offences are serious one like attempt to murder, dacoity, extortion, formation of unlawful assembly, obstructing public servant, criminal breach of trust involving forgery etc. Though he stands acquitted in most of the cases, sheer number of offences registered against him for a huge period of time is clearly indicative of his nature. It is in the light of such peculiar state of affairs, there is every room to believe that granting protection to him in the form of anticipatory bail is certain to cause a serious prejudice to the investigating machinery which has already been demonstratively not fair enough, as is discussed hereinabove.

21] In view of above, the applicant is not entitled to the discretionary relief and protection.

22] The application is rejected.

23] At this juncture the learned advocate Mrs.Kulkarni for the applicant submits that to enable the applicant to approach Supreme Court, he may be granted some ad-interim protection. The learned Public Prosecutor opposes the request.

24] Since there has been no ad-interim protection ever granted in favour of the applicant, since his substantive application is being rejected, he cannot be granted any ad-interim relief at this stage. The request is rejected.

[MANGESH S. PATIL, J.]

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