IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.322 OF 2021
WITH APPLN/811/2021 IN ABA/322/2021

Shaikh Khaja Moinuddin s/o. Fakir Mohammed,
Age : 60 years, Occu : Business,
R/o : Sailani Nagar, Nanded,
Tq. & Dist. Nanded. … **Applicant**

VERSUS

The State of Maharashtra
through Police Inspector,
Police Station, Vazirabad, Nanded,
Tq. & Dist. Nanded. … **Respondent**

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Advocate for Applicant : Mr. M.V. Ghatge h/f. Mr. B.N. Gadegaonkar
APP for Respondent/State: Mr. S.P. Sonpawale
Advocate for Assist to APP : Mr. A.L. Kanade

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CORAM : MANGESH S. PATIL, J.

DATE : 05.05.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure by one of the accused from Crime No.67/2021 registered with Vazirabad Police Station, Dist. Nanded for the offence punishable under Sections 420, 406, 504, 506 read with Section 34 of the Indian Penal Code.

2. Briefly stated the allegations are to the effect that the informant was due to retire and was to get retirement benefit in lump sum. The applicant was in need of money. He gave an offere to participate in a joint venture in the form of business of clothes. The applicant assured to make

him a beneficiary in 50% of the profit. He also promised to engage him as an employee with the establishment with a regular salary to the tune of Rs.30,000/- per month. It is alleged that in view of such a promise of the applicant, he paid huge sum of Rs.18,00,000/- from time to time. Though he was paid Rs.15,000/- per month from June 2019 to May 2020 nothing was paid to him thereafter. He realized that he was cheated in parting the money and the money was misappropriated. Accordingly he lodged the report and the offence was registered.

3. The learned advocate for the applicant Mr. Ghatge holding for Mr. Gadegaonkar submits that at the most the dispute could be of civil nature. There is no criminality involved. In fact it was a simple money lending transaction. The applicant was in need of money. The informant offered to lend the money and to charge interest thereon. It is pursuant thereto the informant paid Rs.10,00,000/- out of which the applicant has already repaid Rs.5,00,000/-. The amount of interest of Rs.15,000/- per month was periodically paid. Even the informant acknowledged receipt of the amount of Rs.5,00,000/-. The vouchers have also been placed on record. Since because of the pandemic and the lock-downs the business of the applicant ran into rough whether, he was unable to pay the interest for the subsequent period. The applicant started creating obstruction in running of the shop and the applicant had to file a civil suit for injunction. Even the informant has put in appearance and the matter is pending. The learned advocate would therefore submit that accepting the allegations at

their face value, there is no material to show that there was a dishonest intention on the part of the applicant since inception to cheat the applicant. Whatever money is due to the informant he will have to recover by resorting to the legal mode. Considering these facts the applicant be granted anticipatory bail.

4. The learned APP duly assisted by the learned advocate Mr. Kanade for the original informant strongly opposes the Application. He submits that the offence is serious. There is an agreement, copy of which is recovered during the course of investigation showing that indeed the applicant and the informant had entered into some sort of arrangement in the form of a partnership in the business of clothes. Pursuant thereto the former had received Rs.15,00,000/- from the latter. At this juncture this document is sufficient to demonstrate that the transaction was not merely in the nature of a money lending transaction but was in the nature of a partnership agreement. The learned APP would further point out from the copies of the bank statements of the informant that indeed an amount of Rs.15,00,000/- was paid to the applicant. The applicant has systematically cheated the informant. They money has to be recovered. It is a clear case of cheating and misappropriation. Custodial interrogation of the applicant is necessary and the Application be rejected.

5. I have carefully gone through the papers of the investigation. Obviously, since the parties are before the Civil Court, no comment can be made as to the nature of the transaction entered into between the two,

whether it was an arrangement in the form of partnership in the business of clothes or was it merely a money lending transaction.

6. Similarly, there is enough material to show that in fact some amount was paid by the informant to the applicant. Even according to the former it was Rs.10,00,000/- whereas according to the informant it was Rs.15,00,000/-. There are bank statements produce by both the sides showing payment and repayment.

7. The foremost circumstance in my considered view which is decisive is the fact that the agreement was entered into way back on 08.01.2019. Even according to the informant an amount of Rs.15,000/- per month was paid to him regularly between June 2019 to May 2020. It is thereafter that the applicant is stated to have stopped making payment. Going by the nature of allegations being levelled, the delay in lodging the FIR is conspicuous. I do not intend to indulge into the aspect of veracity of the allegations but for this period of delay being sought to be explained. The FIR reads that some amount was paid by the informant even subsequently as late as in the month of February 2021, when, already a suit was filed by the applicant against him and he has also appeared in the suit. Pertinently, such a payment is also stated to be in cash.

8. All in all, all the aforementioned circumstances are indicative of the fact that the dispute between the parties is in the nature of a civil dispute. So far as the element of criminality is concerned, the aforementioned circumstances are indicative that the ingredients for

constituting the offence of cheating and misappropriation are conspicuously missing. It is trite that in the matter of cheating the dishonest intention has to be since beginning. Considering the facts and the events discussed herein above, in my considered view, it is a fit case where the applicant is entitled to anticipatory bail subject to usual conditions.

9. The Application is allowed. In the event of arrest of the applicant in connection with Crime No.67/2021 registered with Vazirabad Police Station, Dist. Nanded for the offence punishable under Sections 420, 406, 504, 506 read with Section 34 of the Indian Penal Code, he shall be released on bail on his executing personal recognizance for an amount of Rs.20,000/- (Rs. Twenty Thousand only) and furnishing a solvent surety in the like amount subject to following conditions:

a) He Shall attend the Police Station, Vazirabad as and when called by the police for investigation.

b) He shall not tamper with the evidence.

c) He shall made himself available and attend all court dates.

d) He shall not directly or indirectly make any inducement, threat or promise to the witnesses and informant and not to commit any offence against informant.

(MANGESH S. PATIL, J.)

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