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

ANTICIPATORY BAIL APPLICATION NO. 779 OF 2021

Sangeeta w/o Anil Rai,
Age : 35 years, Occu. Household & Business,
R/o. Flat No. C-14, Chanakyapuri,
Peer Darga Road, Aurangabad,
Tq. & Dist. Aurangabad. ...**Applicant**

Versus

The State of Maharashtra ...**Respondent**

.....
Mr. D. J. Choudhary, Advocate for the applicant
Mr. A. V. Deshmukh, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

RESERVED ON : 18th August, 2021
PRONOUNCED ON : 01st September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0109 of 2021, registered with M.I.D.C. Waluj Police Station, District Aurangabad, for the offences punishable under Sections 420, 406, 467, 468, 471 r/w 34 of the Indian Penal Code.

2. It is the case of prosecution that the informant runs business of sale and purchase of steel material in the name and style as M/s. Sonalika Metal Corporation, Kumbharwada, Mumbai. The accused Anil Rai is the Managing Director of M/s. Orbit Electro-mech India Private Limited situated at MIDC, Waluj, Aurangabad (hereinafter referred to as “Orbit Company”). The informant supplied steel material worth Rs. 35.00 lakhs to Orbit Company and accordingly some payment was made. During the period July-2017 to March-2018, informant supplied 30 to 35 tonnes steel worth Rs. 60.00 lakhs to said Orbit Company. Since the payment was delayed, the informant approached the said accused, however, 50% directorship of the company in presence of his wife namely, Sangeeta Rai (applicant) and Manager Sunil Rai, was decided to be given to which informant agreed. Informant further paid Rs. 35.00 lakhs towards the said partnership. To his surprise, on 01.03.2019, informant came to know that he had been removed from the directorship of the Orbit Company. Similarly, the informant did not find Rs. 1.25 lakh shares standing in his name from the balance-sheet of the said Orbit Company. The informant therefore sent a legal notice.

3. The prosecution, however, contends that accused Anil Rai then contacted the informant in the month of July-2019 and executed a settlement agreement with an assurance that the informant would be made director again and his moneys would be refunded to him. Accordingly, the informant was again made Director on 10.07.2019, however, again on 09.08.2021, on the basis of forged signatures the informant and his wife were removed from the directorship of the said Orbit Company. Thus, in all, the applicant and her husband namely, Anil Rai not only committed the offence of cheating but also committed criminal breach of trust in respect of sum to the tune of Rs.6.78 Crores.

4. Mr. D. J. Choudhary, learned Counsel for the applicant, submits that the dispute between the parties is purely of a civil nature arising out of contractual and commercial obligations. The informant suppressed material information that he had preferred CP(IB) No.1988(MB)/2019 before the learned Member, National Company Law Tribunal, Mumbai Bench on 07.05.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016, which ultimately came to be amicably settled and the allegations against each other were withdrawn.

5. The learned Counsel then next submitted that the applicant herein had resigned from the post of Director on 07.09.2018, which was accepted vide Resolution dated 11.09.2018 and, therefore, she cannot be held liable for anything. Even otherwise the police authorities have seized the entire record of the Orbit Company, examined the witnesses and the documentary evidence has been seized from the informant and, therefore, in such circumstances the custodial interrogation of the applicant is not required. Merely she happens to be the wife of the accused Anil Rai, the present applicant has been booked. In such circumstances, the application deserves to be allowed, urged learned Counsel.

6. Mr. A. V. Deshmukh, learned APP, on the other hand, opposed the submissions by contending that the shares standing in the name of informant came to be illegally transferred by forging the signatures of informant. The learned APP invited my attention to the investigation papers and would submit that there being no merit in the application, same is liable to be rejected.

7. First of all, let me find out whether on the date of alleged incident the applicant was Director of Orbit Company. It is the

specific case of the applicant that she had resigned from the post of Director on 07.09.2018 and it was accepted vide resolution dated 11.09.2018. The letter of resignation as also resolution are very much on record. So also Form No. DIR-12 issued by Registrar of Company sufficiently demonstrates that the applicant came to be ceased as Managing Director of the said Company with effect from 11.09.2018. It is also pertinent to note from the FIR itself that for the first time the informant came to be appointed as a Director and displayed on the website of the MCA of Orbit Company on 22.09.2018. This clearly goes to show that even on 22.09.2018 when the informant came to be appointed as one of the Directors of the said Company, the applicant was nowhere in picture.

8. Secondly, the next submission of the learned Counsel for the applicant is that there was proceeding between the informant and the applicant before the National Company Law Tribunal at Mumbai, wherein both the parties amicably settled the matter and withdrew the allegations against each other. This material fact was suppressed by the informant while lodging the complaint. There are documents to that effect which clearly go to show that there were terms of settlement between the parties. A copy of which (Exh. C) is filed on record.

From paragraph 5 thereof, it is seen that the applicant was ready to pay the unpaid outstanding to the informant herein and the first installment was of Rs. 50.00 lakhs to be paid at the end of February-2021. Surprisingly before the period of February-2021 was over, the FIR in question came to be filed by the informant for the reasons best known to him.

9. Thirdly, having regard to the allegations and as also documentary evidence produced on record, in my considered opinion, the dispute between the parties is purely of a civil nature arising out of contractual and commercial relationship. If at all there are dues of amount, at the most, this amount can be said to be not paid in terms of agreement and certainly would be governed by the provisions of Contract Act. This necessarily implies civil remedies.

10. Apart from above, it is admitted position on record that the Investigating Authority has seized the entire record of Orbit Company from the custody of the informant. In such circumstances, I am of the firm view that the custodial interrogation of the applicant is not required. This being so, I am inclined to allow the application.

11. In view of the above, I pass the following order.

<u>ORDER</u>

i] The application is allowed.

ii] The interim relief granted by this Court on 29th July, 2021 is confirmed and made absolute.

[V. G. BISHT]
JUDGE