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

**ANTICIPATORY BAIL APPLICATION NO. 848 OF 2021**

Pandu s/o Venkat Ramappa Murim Shetti
Age : 39 years, Occu. Business,
R/o. 1/195, Dharmavaram Road, Ananthapur,
Andhra Pradesh. ...**Applicant**

**Versus**

The State of Maharashtra,
through the MIDC Plice Station, Latur. ...**Respondent**

.....
Dr. Swapnil D. Tawshikar, Advocate for the applicant
Mr. S. B. Narwade, APP for respondent / State
.....

**CORAM : V. G. BISHT, J.**

DATE OF RESERVING THE ORDER : 23rd August, 2021
DATE OF PRONOUNCING THE ORDER : 02nd 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. 0271 of 2021, registered with M.I.D.C. Latur Police Station, District Latur, for the offences punishable under Sections 420, 406 r/w 34 of the Indian Penal Code.

2. It is the case of prosecution that the informant is a businessman having business of wholesale trading of various kinds of

pulses in the name and style as Aditya Industries, situated at MIDC, Latur. The informant is well acquainted with a broker engaged in the said business by name Jagdish Jaju, since long time. On the advise of said Jaju, on 12.01.2021, the informant supplied 250 quintals of black gram worth Rs. 25,25,000/- to one Kurinjee Pronatural Foods Private Limited, Chennai, Tamilnadu. Again on 16.01.2021, the informant supplied 250 quintals black gram worth Rs. 25,25,000/- to the said Company. As such, the informant supplied pulses to the tune of Rs.50,50,000/- to said Kurinjee Pronatual Foods Private Limited, Chennai, Tamilnadu.

3. It is alleged by prosecution that other businessmen, namely, Atish Ramesh Bachchewar and Pratap Ramling Patil, similarly supplied pulses to said Kurinjee Pronatual Foods Private Limited, Chennai, Tamilnadu. However, in spite of repeated demands by the informant and others, the said Company did not pay the amount to them. Thus, the applicant being the Director of the Company committed the offence of cheating and criminal breach of trust.

4. Dr. Swapnil D. Tawshikar, learned Counsel for the applicant, submits that the applicant is not an employee nor Director of

the Company, namely, Kurinjee Pronatual Foods Private Limited, Chennai, Tamilnadu and, therefore, the criminal prosecution initiated against him is nothing but a misuse of process of law. The learned Counsel then next submitted that the bare reading of FIR would reveal that there is a dispute with respect to the commercial transaction i.e. non-payment of goods supplied by the informant and as such, the question of custodial interrogation of the applicant is out of question. Learned Counsel also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***The Commissioner of Police and Ors. Vs. Devender Anand and Ors.*** reported in *AIR 2019 SC 3807*.

5. Per contra, Mr. S. B. Narwade, learned APP, opposed the submissions contending that from the initial stage of investigation, it is clear that the applicant is a Chairman of the said Company and is also a history sheeter inasmuch as six offences are registered against him. Having regard to the gravity of the offence, it is necessary to have the custody of the applicant for proper investigation. In such circumstances, the application being devoid of merits, needs to be rejected, argued learned APP.

6. I have carefully gone through the investigation papers submitted before me by learned APP. Apart from the FIR and the

statement of the present informant, there are statements of Pratap Ramling Patil and Atish Ramesh Bachchewar, who have also alleged that they had supplied the pulses to said Kurinjee Pronatual Foods Private Limited, Chennai, Tamilnadu on various dates, however, the applicant being Director of the said Company, failed to make payment.

7. Then there is a statement of Jagdish Bajranglal Jaju, with whose instance / advise the informant and others had supplied the pulses to the applicant. It is also clear from his statement that the present applicant is a Chairman of the said Company.

8. It appears that the Investigating Officer has also collected various bills of supply of pulses issued by the informant in the name of said Company including the purchase orders. It is also seen from the investigation papers that on various occasions, the Dy. General Manager of said Company acknowledged payments due to the informant and assured that the said payments would be cleared by a particular date. Similarly, there are other similar documents showing the transaction of the said Company with Atish Ramesh Bachchewar and Pratap Ramling Patil. From these documentary evidence, it is *prima facie* clear that the informant and others had supplied pulses to

the applicant and Dy. General Manager of the said Company acknowledged the amount due to the informant and others.

9. Then there is contact details of the Directors and officers of the Kurinjee Pronatual Foods Private Limited, Chennai, Tamilnadu, which clearly shows that the applicant is the Chairman of the said Company.

10. Needless to say that there is overwhelming *prima facie* evidence about the complicity of the applicant in the alleged offences. Not only it is clear from the documentary evidence that the pulses were supplied to the Company but also, at the same time, the Dy. General Manager of the said Company acknowledged payments due to the informant. Though it may be a commercial transaction, the element of criminality is also there inasmuch as at the request of said Company the goods were supplied and the Company utterly failed to make any payment.

11. The ratio laid down in the case of **Commissioner of Police** (supra), will not further the case of the applicant inasmuch as facts in the case at hand and in the case cited supra are distinguishable.

In that case, the original complainant had entered into an agreement to sell in respect of house with respondent nos. 2 and 3 therein for a consideration of Rs. 54.00 lakhs. Accordingly, that amount was paid. Later on, original complainant learnt that the said property had been mortgaged to Andhra Bank, when a notice by the said Bank was affixed on the property and he was compelled to settle the claim of Andhra Bank for release of the mortgaged documents. In that factual backdrop, the complainant lodged the report u/s 420 r/w 34 of the IPC. The Hon'ble Apex Court on an appreciation of record, found that after having come to know that the property was mortgaged with the Andhra Bank, the original complainant himself paid the mortgage money and got the mortgage redeemed. The Hon'ble Apex Court further found that not only that thereafter he got the sale deed executed in his name and only thereafter he filed the complaint with the learned Magistrate. Thus, it is quite clear from the above facts that the complainant was well aware of the fact that the property was mortgaged and with this knowledge he himself paid the mortgage money and got the mortgage redeemed. The Hon'ble Apex Court further noted that the initiation of criminal proceedings by the original complainant is nothing but abuse of process of law. In that circumstance, the Hon'ble Apex Court quashed and set aside the order of High Court whereby the High Court had directed the Commissioner of Police to take action against respondent nos. 3 to 5 (i.e. appellant nos. 3 to 5 in the said case).

12. For the aforesaid reasons, I am not inclined to entertain the present application. Hence the following order.

**ORDER**

The application is rejected.

**[ V. G. BISHT ]**
**JUDGE**