

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

ANTICIPATORY BAIL APPLICATION NO. 997 OF 2021

1. Prakash s/o Kondaji Zaware, ... **Applicants**
Age 60 years, Occu: Business & Agri.
2. Sharda w/o Prakash Zaware,
Age 55 years, Occu: Household
3. Vanita w/o Prashant Zaware,
Age 33 years, Occu: Household
All-
R/o Sharda Bungalow, Ghodekar Mala,
Sangamner, Dist. Ahmednagar.

VERSUS

The State of Maharashtra, ... **Respondent**
Through Police Inspector,
Sangamner City Police Station,
Tq. Sangamner Dist. Ahmednagar

Mr. S. S. Dixit, Advocate for the applicants,
Mr. S. B. Narwade, A.P.P. for the State.
Mr. K. N. Shermale, Advocate assists to PP.

CORAM : PRAKASH D. NAIK, J.
DATE : 13th December , 2021

ORDER:

1. This is an application for pre-arrest bail in Crime No. 1996/2020 registered with Sangamner City Police Station, District Ahmednagar for the offences punishable under Sections 420, 504, 506, r/w 34 of the Indian Penal Code. The First Information Report (for short "FIR") was registered on 14.11.2021.

2. The complainant has alleged that he is Doctor by profession. In 2015, he got acquainted with Prashant Zaware. They became friends. The complainant had informed him that he intends to purchase property. Prashant Zaware stated that his wife Vanita Zaware and brother Pravin Zaware own property situated at Gunjalwadi bearing Survey No.45 and admeasuring 10 Gunthas. Property is situated near the road. On account of financial constraint, the property is required to be sold. He was persuaded to purchase the said property. On 24.02.2016, Prashant Zaware, Vanita Zaware, Pravin Zaware, Prakash Zaware and Sharda Zaware met the complainant in Hospital. There was discussion about the property and deal was orally finalized. It was agreed that the property admeasuring 10 gunthas would be sold to the complainant for amount of Rs.40 lakhs. It was represented by Prashant Zaware that they intend to clear debts of people from whom they have borrowed money and hence the deal has to be finalized expeditiously. The complainant intimated about the said fact to his father and friend. Deal was finalized. Prashant Zaware and his relatives insisted that amount of Rs.20 lakhs be paid towards consideration on the same day. If payment is made by cheque or through Bank, there will be income tax difficulty. The complainant demanded requisite documents. The accused promised that the documents will be furnished shortly. Rs.20 lakhs were given to Prashant Zaware, Vanita Zaware, Pravin Zaware, Prakash Zaware and Sharda Zaware in the presence of witnesses. On 28.02.2016, the complainant contacted Prashant Zaware and he stated

that he had applied for copies of documents in concerned office. He would come with all the documents. On 15.03.2016, Prashant Zaware his wife Vanita Zaware and brother , Pravin Zaware again visited the Hospital and approached the complainant. Prashant Zaware handed over copy of old document relating to sale deed and stated that other documents would be furnished shortly. However, they insisted that balance amount of Rs.20 lakhs be paid immediately since they have to repay loans. The complainant informed about the said fact to his father and friend. Prashant Zaware had called his father and mother. In the presence of witnesses, the amount of Rs.20 lakhs was paid to Prashant Zaware, Vanita Zaware, Pravin Zaware, Prakash Zaware and Sharda Zaware. Payment was made in cash. Thereafter, the complainant had insisted for execution of sale deed. The accused kept on postponing the execution of sale deed. The complainant realized that he is being cheated by the accused. He decided to terminate the transaction. On 24th May, 2016, Prashant Zaware visited the Hospital. The complainant called his father and friend. Vanita Zaware, Pravin Zaware, Prakash Zaware and Sharda Zaware were also called at the Hospital. After discussion it was decided to cancel the deal. Agreement in that regard was executed and same was notarized. It was agreed that the accused would return the amount of Rs.40 lakhs to the complainant. Prashant Zaware, Vanita Zaware and Pravin Zaware had handed over cheques to the complainant. It was also agreed that the accused would repay amount of Rs.40 lakhs within one month and if the amount is not

returned, the complainant was permitted to deposit the cheques. However, the amount was not returned to the complainant. Hence the complainant deposited the cheques with his bank. Cheques were dishonoured on account of insufficient funds. The complainant lodged proceedings under section 138 of the Negotiable Instrument Act against Prashant Zaware, Vanita Zaware and Pravin Zaware. The said proceedings are pending. When the complainant demanded money, he was threatened of dire consequences. F.I.R. was lodged on 14.11.2020.

3. The applicants had preferred application for anticipatory bail before the Sessions Court. Said application was rejected vide order dated 18th August, 2021.

4. The applicants had preferred application for quashing the proceedings before the Division Bench of this Court. Vide order dated 8th September, 2021, Division Bench of this Court stayed the further proceedings in the matter and the application was adjourned to 6th October, 2021. The complainant had preferred Special Leave petition before the Hon'ble Supreme Court. The said petition was disposed of vide order dated 8th October, 2021. It was observed that there are no ground to interfere with the impugned order which is an interim order passed by the Bombay High Court. The High Court was requested to dispose of the matter as expeditiously as possible without granting any unnecessary adjournments. Thereafter the aforesaid criminal application challenging the first information report was finally heard and vide order

dated 01.12.2021, the proceedings against Prakash Kondaji Jawar and Sharda Prakash Zaware were quashed. The application at the instance of Prashant Prakash Zaware, Vanita Prashant Zaware and Pravin Prakash Zaware was allowed to be withdrawn. Thus the present application qua applicant Nos. 1 and 2 has become infructuous and its is pursued for applicant No.3.

5. The documents placed on record indicate that the complainant has filed a suit before the Court Civil Judge, Senior Division, Sangamner numbered as Special Summary Suit No.1/2017. Vanita Zaware, Pravin Zaware and Prashant Zaware are defendants. The said suit was filed for recovery of Rs.40 lakhs on 26.08.2016. The complainant filed complaints under the Negotiable Instrument Act on account of dishonour of cheques. The first complaint is numbered as SCC No.1018/2016. It was filed on 07.10.2016. Process was issued against the accused for offence under section 138 of the Negotiable Instrument Act by order dated 11.11.2016. The second complaint is numbered as SCC No.1018/2016. It was filed on 07.10.2016. Process was issued for offence under section 138 of the Negotiable Instrument Act on 11.11.2016.

6. The complainant filed private complaint before the Court of learned J.M.F.C., Sangamner which was numbered as Criminal M.A. No.729/2016. The complaint was filed for offences under section 420, 504, 506 read with 34 IPC on 3rd October, 2016. It was lodged

against applicant and others. Vide order dated 18th October, 2016, learned JMFC rejected the prayer of the complainant for investigation under section 156(3) Cr.P.C. and directed that application be put up for recording verification statement of the applicant on 16.11.2016. Thereafter, by order dated 10.10.2018, the Police Inspector of City Police Station, Sangamner was directed to initiate enquiry in the matter as per provisions of Section 202 of Cr.P.C. and file report till 20.12.2018. Prosecution is silent in their report about the outcome of the directions of enquiry under section 202 Cr.P.C. as per order of the learned J.M.F.C.

7. Learned Advocate for the applicant submitted that the applicant No.3 is a lady. Her custodial interrogation is not necessary. The complainant had already initiated civil proceedings and the proceedings under the Negotiable instruments Act. Prashant Zaware and Pravin Zaware were arrested. The evidence is being recorded in the complaint under section 138 of the Negotiable Instrument Act. Although the learned JMFC had directed enquiry under section 202 of Cr.P.C. , the complainant has registered FIR. The report was submitted to the Court by the Police. The order of enquiry under Section 202 Cr.P.C. had attained finality. The prosecution has suppressed the said fact and has not brought to the notice of this Court the outcome of enquiry under section 202 Cr.P.C. The complainant has also not brought to the notice of the Court the action initiated by the police

pursuant to the order of the Court. By keeping the proceedings initiated by private complaint pending, FIR was registered. Applicant no.3 need not be subjected to custodial interrogation.

8. Learned A.P.P. submitted that the applicant no.3 has participated in the crime. False representations were made to the complainant. Transaction of sale was not completed. The transaction was cancelled by executing agreement. The applicant No.3 and other accused had promised that entire amount would be refunded to the complainant. The amount was not refunded. Cheques issued by way of security by accused were agreed to be deposited by complainant on non refunding the amount. The said cheques were deposited and the same were dishonoured. the applicant No.2 is also drawer of cheque. There was dishonest intention right from inception. The accused were not interested in repaying the amount. The applicant No.3 is not entitled for any relief under section 438 Cr.P.C. Evidence recorded against the accused show complicity of applicant No.3 in the crime. She has played prime role in the transaction. She was owner of property. Custodial interrogation is necessary. The complainant was threatened by accused and complaints were lodged on 01.07.2016 and 31.07.2016. Complaints were registered as NC complaints.

9. Learned Advocate for the complainant submitted that applicant No.3 was petitioner in Criminal Application No. 59/2021. Considering the role played by her in the crime and nature of evidence against her,

the Division Bench of this Court was not inclined to grant relief to her. There is sufficient evidence showing her involvement. The order dated 1st December, 2021 refers to role played by applicant No.3. The court has observed that allegations have been made against co-accused including applicant about accepting consideration amount from the complainant by representing him their financial difficulties. Said transaction was cancelled when it appeared to the complainant that it cannot be completed due to technical flaw. Agreement dated 24.05.2016 was executed. Proceedings against co-accused were quashed on the ground that they were not parties to the said agreement. However, accused Nos. 1 to 3 i.e. Prashant Zaware, Vanita Zaware and Pravin Zaware were parties to the agreement. In terms of the said agreement, they had agreed to return the amount to the complainant and accordingly issued certain cheques for the said amount. However, the said cheques were dishonoured. The cheques were issued from the accounts of Prashant Zaware, Vanita Zaware (applicant) and Pravin Zaware. There is sufficient evidence against applicant No. 3 and other accused. There is no bar for initiating parallel proceedings under civil and criminal laws. The complainant was required to initiate criminal proceedings under section 138 of the Negotiable Instruments Act since the cheques were dishonoured. The law prescribed for limitation for initiating the said proceedings. The complainant was also required to file civil suit claiming recovery of money. Only on the ground that complainant had initiated such

proceedings, applicant No.3 and the co-accused cannot be absolved from their liability and criminal prosecution. Conduct of applicant No.3 and other accused is required to be taken into consideration. There was dishonest intention right from inception. They have not fulfilled any promise. The applicant No.3 is not entitled for anticipatory bail. He relied on the decision of Apex Court in the Case of **K. Jagdish Vs. Uday Kumar G.S. & another** delivered in Criminal Appeal No.56/2020 and another decision of Apex Court in the case of Kamal Pokarnekar Vs. State of Maharashtra delivered in Criminal Appeal No.255/2019. Hence the application seeking anticipatory bail preferred by applicant no.3 may be rejected.

10. From the documents on record it is apparent that the complainant was acquainted with Prashant Zaware. It was represented to him that the property owned by Vanita Zaware and others is available for sale. The complainant had agreed to purchase the property. He had parted amount of Rs.40 lakhs. It is alleged that inspite of acceptance of the amount, the accused did not complete the transaction. The complainant realized that the accused are not in position to complete the transaction, it was agreed to terminate the transaction. Agreement was executed between the parties with an understanding to refund the amount and cheques were issued. The cheques were dishonoured on 26.07.2016. Complaint under section 138 of Negotiable Instrument Act was filed on 07.10.2016. Learned

Magistrate issued process on 11.11.2016. The documents placed on record indicate that the Affidavit of examination-in-chief in the complaint numbered as SCC No.1018/2016 under section 138 of the Negotiable Instrument Act has been submitted and examination-in-chief is over on 02.02.2018. Affidavit in chief is also submitted in SCC No. 1017/2016 and the cross examination was recorded on 23.11.2019. Civil Suit is filed for recovery of money on 26.08.2016. Apparently, civil suit is pending. The complainant had approached police by filing complaint. The contents of private complaint filed by complainant dated 3rd October, 2016 seeking directions under section 156 (3) Cr.P.C. refers to the fact that the complainant had approached Sangamner Police Station repeatedly but action was not initiated by them. Thus, the police had apparently not taken cognizance of the complaint lodged by the complainant. Hence, he filed a private complaint as stated above.

11. Vide order dated 18th October, 2016, the learned JMFC, Sangamner rejected the prayer for investigation under section 156(3) Cr.P.C. and the complaint was put up for recording verification statement of complainant on 16.11.2016. Learned JMFC thereafter vide order dated 10.10.2018 observed that the complainant has filed application alleging that the accused Nos. 1 to 5 had committed offences under section 420, 504, 506 r/w 34 IPC. The court perused the documents on record, heard counsel for the complainant and it was observed that on going through the xerox copies of the documents produced on record

and considering the nature of offence alleged against accused No.1 to 5, the matter needs to be investigated before issuing process against the accused. Hence it would be proper to send the matter for enquiry as per provisions under section 202 Cr.P.C. The Court directed the police Inspector of City Police Station, Sangamner to initiate enquiry in the matter as per provisions of Section 202 of Cr.P.C. and file report by 20.12.2018.

12. Learned APP has submitted that he has no instructions about the outcome of the enquiry or whether such enquiry is to be conducted in accordance with the order dated 10.10.2018. Learned counsel for the applicants, on instructions, however submitted that the report was indeed submitted by the Court. The complainant had preferred Revision Application challenging order of learned JMFC and the said Revision was withdrawn. It appears, in spite of directions for enquiry under section 202 Cr.P.C., the complainant had lodged the FIR with the police station Sangamner on 14.11.2020 against Prashant Zaware, Vanita Zaware, Pravin Zaware, Prakash Zaware and Sharda Zaware. The first information report does not disclose that the complainant had filed private complaint before the Court and the learned Magistrate had directed enquiry under section 202 Cr.P.C. It appears that either the order of Magistrate was not complied or the report under section 202 has been kept in abeyance.

13. It is pertinent to note that from the contents of the private complaint filed by the complainant it appears that he had approached the police and cognizance was not taken and hence he had filed application seeking investigation under section 156 (3) Cr.P.C. However, the same police station had taken cognizance of the complaint and registered FIR on 14.11.2020. The transaction is of 2016. The said agreement was executed on 24.05.2016. Civil Suit was filed on 26.08.2016. Complaint under section 138 of Negotiable Instrument Act was filed on 07.10.2016. Process was issued on 11.11.2016. Private complaint was filed on 03.10.2016. The case was kept for verification on 18.10.2016. Enquiry under section 202 was directed on 10.10.2018. The FIR was registered on 14.11.20120.

14. Two accused were arrested. This court is conscious of the fact that the application for quashing preferred by applicant was withdrawn, apparently since the Court was not inclined to grant relief. However, question is, in the facts of this case, whether custodial interrogation of applicant is necessary. The decisions relied by learned counsel for complainant deal with powers of quashing and there cannot be doubt about it.

15. Trial in the complaint under section 138 of Negotiable Instrument Act has already commenced. It is true that there is no bar for initiating civil proceedings and criminal case in respect to the same

cause of action. However, in the present case, the FIR has been registered belatedly on 14.11.2020. Although the police did not take cognizance of complaint and the Court directed enquiry under section 202 Cr.P.C., the same police station had registered FIR on the complaint of the complainant. The applicant is lady. In the circumstances, custodial interrogation of the applicant No.3 is not required.

16. Hence, I pass the following order :-

ORDER

- i. Application preferred by applicant No.1 Prakash Kondaji Zaware and applicant No. 2 Sharda w/o Prakash Zaware has become infructuous on account of quashing of proceedings.
- ii. Application preferred by applicant No.3 Vanita w/o Prashant Zaware is allowed.
- iii. In the event of arrest of applicant No.3 Vanita w/o Prashant Zaware in Crime No.1996/2020 registered with Sangamner City Police Station, District Ahmednagar, applicant No.3 be released on bail on executing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- iv. Applicant No. 3 shall report the Investigating Officer on 20.12.2021, 21.12.2021 and 22.12.2021 between 11.00 a.m. and

1.00 p.m. and thereafter as and when called for, till filing of the charge-sheet.

- v. The observations made in this order are prima facie for adjudicating application preferred by applicant.
- vi. Application stands disposed of.

(PRAKASH D. NAIK, J.)

JPC