

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

ANTICIPATORY BAIL APPLICATION NO. 1307 OF 2021

CHANDRAKANT SHRIRAM KHER
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. S.M. Zaware
APP for Respondent : Mr. A.S. Shinde

CORAM : PRAKASH D. NAIK, J.
DATE : 04.12.2021.

Per Court :

1. The applicant is apprehending his arrest in Crime No. I-282/2021, registered with Loni Police Station, Taluka Rahata, District Ahmednagar, for the offences punishable under Sections 406, 420 of the Indian Penal Code.
2. The case of the prosecution is that the complainant is the owner of Swadarshan Dairy Products. He is in business of dairy products which is situated at Gut No. 48, Babhleshwar, Taluka Rahata. The accused was working as manager with complainant's dairy in the year 2018 for a period of about seven months. The complainant was providing milk and milk products to Warna Diary, Malegaon, Sinner, District Nashik. Certain dues of the complainant's company were pending with Warna Milk

Products. The Director of Warna Dairy stated that the complainant can sell the milk cream of their company and appropriate the dues. The complainant had discussion with applicant accused. The applicant stated that he knows one party at Pune who can purchase the milk cream. In good faith, the applicant was assigned the work of selling milk cream. The Director of Warna Dairy, Shri Gulwe was informed to handover milk cream to the applicant. On 26.10.2018, the applicant proceeded to Sinner, District Nashik with truck and took delivery of the milk cream from Warna Dairy worth Rs. 17,80,800/-. After loading the milk cream, the applicant had informed the complainant about it. On 27.10.2018, the applicant remained present at Babhaleshwar dairy. He informed that the milk cream which was collected from Warna Dairy, had been sold to the party at Pune and cheque dated 30.10.2018, issued on IDBI bank for amount of Rs. 17,80,800/- is received by him towards the sale of milk cream. He kept the sai cheque with him checked for the purpose of depositing in the account of complainant's Dairy. On 30.10.2018, the accountant of complainant's dairy - Shri Amol Autade collected the cheque from the applicant and deposited the same into dairy's account. However, the cheque

was dishonored for want of sufficient money. On enquiry with the applicant, he stated that the cheque may be handed over to him, he would approach the party and insist them to transfer the amount by RTGS into the account of complainant's dairy. The cheque was handed over to the applicant. He went to Pune. Enquiry was made with applicant repeatedly about the dues of the company. He kept on assuring that he would find out the party and recover the amount. Thereafter, he stated that he could not trace the party, he would sell his flat and compensate the loss caused to the complainant. On the basis of assurance given by him, the complainant did not taken any action and waited for the payment of money. Thereafter, it was realized that the applicant had cheated the complainant's company and misappropriated the amount of Rs. 17,80,800/-. The FIR was registered.

3. The applicant preferred an application for anticipatory bail before the Additional Sessions Judge, Kopergaon. The said application was rejected by order dated 12.10.2021. While rejecting the said application, it was observed that the applicant has exclusive knowledge of transaction of sale of milk cream and the cheque in question. The Investigating Officer recorded

the statements of Amol Autade, Chittaranjan Gulwe and Kailas Chavan. There is, *prima facie*, evidence to connect the applicant with the offences alleged against him. Thorough investigation is necessary.

4. Learned Advocate for the applicant submitted that the applicant is innocent. He has been falsely implicated in this crime. The incident in question had occurred in the year 2018 and the FIR has been lodged in the year 2021. There is unexplained delay of three years in lodging the FIR. The milk cream was sold to the party and the cheque was issued by them. It was deposited with the bank of complainant. The cheque was dishonored. The applicant tried to contact Ganesh Bhandkhile and Vyankat Konale. They had given fake address and cheated him. There is no evidence to connect the applicant with the crime. The applicant had neither received any amount nor he was in possession of the material. Nothing is to be recovered from him. He is a senior citizen. There are no criminal antecedents against him. The applicant had lodged complaint on 21.01.2019 with Police Commissioner against Vyankat Konale and Ganesh Bhandkhile. He is not in possession of the cheque. The applicant filed application to Loni police

station that he had returned the cheque to owner of Swadarshan Dairy by RPAD. The envelopes forwarded by speed post has been received by the complainant. The postal authorities have issued the certificate in that regard. Custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that the milk cream was handed over to the applicant, the same was purportedly delivered to the party by the applicant. He has produced the cheque allegedly received from party. However, the cheque was dishonored. The applicant kept on assuring that he would trace the party and recover the amount. The promises were false. The cheque was not received by the complainant. It is in his possession. He is misleading the investigation agency. He has created the false defence. Attempts were made to search him at his residence on the address provided by him but he was not found. Although, he promised that he would sell the flat and return amount, he sold the flat and disappeared. Statement in that regard was recorded. The amount has been misappropriated by the applicant. He made a false statement that milk cream is delivered to the party. Custodial interrogation of the applicant is necessary.

6. In rejoinder, the learned Advocate for the applicant submitted that the applicant is not absconding, there is change in address. The applicant has filed Additional affidavit stating that the applicant was resident of the address which was mentioned in the title clause of the application for bail. In the year 2019, the applicant sold the property and is currently residing at plot No. 581, Mauje Gaware, Taluka Karad, District Satara. He is willing to co-operate with the investigation. At the time of filing the anticipatory bail application, this fact had remained to be disclosed to the advocate on record. The Advocate has inadvertently used the same address from the title clause of the bail application of the Sessions Court as well as from the FIR and Aadhar card at the time of filing this application. He did not noticed the same. Mentioning of old address was neither intentional nor deliberate. The applicant is furnishing a new address.

7. The aforesaid affidavit has been filed after the learned APP, on instruction, pointed out that the applicant was not found at the address mentioned by him. Statement of witness was recorded, wherein, it is stated by him that the applicant is not

residing in Godavari Plaza. Statement of another witness was recorded. He has stated that the flat No. 123, Godavari Plaza, Shaniwar Peth, which is the address given by the applicant has been purchased by him from the applicant. The witness is in possession of the premises and the owner of the said premises. He also produced the photograph of index with regard to the registration of the sale of the said premises.

8. It is pertinent to note that the case of the prosecution that the milk cream was handed over to the applicant which is not disputed fact. The applicant had sold it to the party at pune. The applicant had been provided the details of the party. He had promised the complainant that he would trace the party and recover the amount. After realizing that he cannot fulfill his promise, the applicant stated that he would compensate the loss. The investigation going on as to verify that who had issued the cheque and who had purchased the milk cream. Since the milk cream was handed over to the applicant, it was the responsibility of the applicant to furnish the details and recover the amount. The conduct of applicant is suspicious. It is also apparent that the applicant has been creating false defence to avoid his liabilities. He has forwarded the envelope by register

post A.D. and alleged that it was containing the cheque and the envelope has been delivered. If he was in possession of the cheque nothing had prevented him to handover the cheque personally. Cheque is not received by complainant. It is also apparent that the applicant has claimed that he had lodged the complaint to the police on behalf of the complainant's diary. The copy of the complaint dated 21.01.2019, has been annexed to the applicant. It is purportedly forwarded by the applicant and the complainant to show that the complainant is also aggrieved against the persons to whom the delivery of milk cream is being made. However, the said complaint is only sent by the applicant and not by the complainant.

9. On perusal of the complaint dated 21.01.2019 filed by applicant, it can be seen that the claim of the applicant is that the milk cream was collected from Warna Dairy and delivered on 26.10.2018, from Vyankat Kanole and Ganesh Bhandkhile at about 12:30 hours. It was delivered in the night situated at Aadarsh Chowk, Kondhva. The applicant had not furnished detail address. The cheque was received by him which was dishonored on account of insufficient funds. He contacted Kanole and Bhandkhile from time to time and there was no

response by them. They gave false reply and threatened to give false complaint. From the contain of the letter, it can be seen that admittedly milk cream was in possession of the applicant and he agreed the same. It was delivered at Aadarsh Chowk, Kondhva, to the persons named therein. The applicant had represented that he knows the party at Pune to whom he sold the milk cream. It is difficult to believe that he could not furnish the exact address claiming that the delivery was made in the night time. The explanation that he tried to contact the persons to whom the cream was delivered is concocted. The disappearance of the cheque and the conduct of the applicant clearly shows that the applicant is involved in the misappropriation of huge amount. The genuineness of party and cheque as claimed by applicant appears to be false. The custodial interrogation of the applicant is necessary. Hence, no case of grant of anticipatory bail is made out.

ORDER

- i. Anticipatory Bail Application No. 1307/2021 is rejected.
- ii. At this stage, learned Advocate for the applicant submits

that the applicant intends to challenge this order before the Apex Court and hence, interim protection may be extended by four weeks. Submission is opposed by the learned APP. Considering the submission of the learned Advocate for the applicant, interim protection is extended by four weeks from today.

(PRAKASH D. NAIK, J.)

S.P.C.