

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 69 OF 2021

MR. RAJESH BHERULAL JAIN @APPLICANT
RAUJESH DHAKKAD

V/s.

THE STATE OF MAHARASHTRARESPONDENT

Mr. Aabad H. Ponda Senior counsel i/b R. Sathyanarayanan advocate
for the applicant

Ms. A. A. Takalkar APP for the State

Mr. Dilip H. Shukla a/w Shukh Faizan for the intervenor

Mr. Dnyaneshwar S. Bhadange, PSI, Lokmanya Tilak Marg Police
Station, Mumbai

CORAM : NITIN W. SAMBRE, J.

DATE: 11th OCTOBER, 2021.

P.C.:

1] Applicant is seeking pre-arrest bail in C.R. No. 197/2020
registered with L. T. Marg Police Station for offence punishable under
Sections 409, 420 of the Indian Penal Code.

2] Prosecution case against the present applicant is, Dheeraj Soni
was in trade of gold with the applicant since last about 5 years.

Pursuant to demand lodged, 1 Kg gold was supplied by complainant in the form of gold bars. Applicant as usual should have paid the amount of consideration then and there, however, delayed the payment for entire day. At the end of the day, with a promise to pay the amount on the next day, handed over cheque of Rs. 40 Lakhs towards security. Neither the amount is paid till date nor the cheque is permitted to be honoured. As such, offence in question.

3] Learned senior counsel for the applicant Mr. Ponda while trying to make out a case for grant of bail would invite attention of this Court to the narrations in the F.I.R. so as to claim that applicant is falsely implicated. He would claim that applicant immediately after issuance of cheque has issued an intimation not to present the cheque for encashment and also issued communication to his banker that the cheque issued in favour of the complainant might be mis-used, as such, need not be honoured. Reliance is placed on the communication issued to the police about the cheque and fraudulent transaction by the complainant. Shri. Ponda would further claim that transaction was never materialized as the complainant himself has failed to honour the supply within time. As such purchaser from the

applicant has backed out. He would claim that cheque was issued towards security as could be inferred from the endorsement made on the backside.

4] So as to substantiate his case for grant of bail, he would draw support from para 19 & 43 of the Judgment of the Apex Court in the matter of **Shri. Gurbaksh Singh Sibbia and others V/s. State of Punjab [(1980) 2 Supreme Court Cases 565]** and also para 1 & 6 of Judgment of this Court in the matter of **Jagannath Ramghanora Biyani V/s. State of Maharashtra [1981 SCC OnLine Bom 112]**.

5] Learned APP while strenuously opposing the prayer for bail would invite attention of this Court to the investigation carried out till this date. According to her, there is enough material collected during the investigation to depict as to the mode and manner in which the applicant has practiced fraud and offence of criminal breach of trust can be easily inferred.

6] Considered rival submissions.

7] Statement of the complainant, other witnesses who have delivered gold bar to the applicant i.e. employee of the applicant, other witnesses who were earlier working with the applicant stated the mode and the manner of carrying out transaction by the complainant with the applicant (which always used to be in cash and in trust). Mobile tower location of the applicant and complainant apparently speaks of presence of the complainant and applicant at the place of transaction so also call details speaks of conversation. Applicant is unable to give any convincing reason as to why cheque of security of Rs. 40 Lakhs was handed over to the complainant. The invoice, various entries in the business book maintained by the complainant including with that of applicant, statement of witnesses thereby depicting the mode and manner in which transaction used to take place in bullion market, apparently justifies the case of the complainant. Statement of employees of the applicant apparently implicates him in the offence of criminal breach of trust and fraud. Applicant though has accepted the delivery of gold, has failed to honour the demand of payment of consideration and cheat the complainant. Necessary ingredients as such can be inferred. The

dishonesty of the applicant can be inferred as the consideration was not paid.

8] Reliance placed by the learned counsel for the applicant on the Judgment of of the Apex Court in the matter of **Shri. Gurbaksh Singh Sibbia** [cited supra] will be of hardly any assistance. In the case in hand, police has carried out investigation and has established that the applicant is prima facie involved in the crime in question. Custodial interrogation of the applicant, in such eventuality is very much justified. There is genuine need of custody of the applicant as could be inferred from the aforesaid observations.

9] In that view of the matter, no case for grant of bail is made out. Application as such fails, stands rejected.

10] Protection granted earlier by this Court is extended by 4 weeks from today.

[NITIN W. SAMBRE, J.]