IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 818 OF 2021

Saiyad Faiz Hasan … Applicant

Versus

The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO. 1213 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 818 OF 2021

Gautam Sanjaykumar Jhunjhunwala … Applicant

IN THE MATTER BETWEEN :-

Saiyad Faiz Hasan … Applicant

Versus

The State of Maharashtra … Respondent

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Mr. Shahid Pathan, Advocate for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent – State.
Mr. Prathamesh Chachad, Advocate for the applicant in Interim Application.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th APRIL, 2021

PER COURT:

1. The applicant is seeking pre-arrest bail in C.R. No. 35 of 2021 registered with Vanrai Police Station for offences under Section 420 & 406 of Indian Penal Code (for short "IPC"). The First Information Report (for short "FIR") was registered on 6th February,

2021.

2. The case of the prosecution is that in January, 2021, the complainant came across Whats-app promotion messages forwarded by accused having business under the name and style of M/s. Ansari Trading Enterprise with regards to sale of Nitrile Gloves. The complainant contacted the accused and placed the order for purchase of 5000 boxes A+ Quality Nitrile Gloves (Blue Colour). The accused furnished invoices, E-way bills and LR copy. After confirmation of the order placed by the complainant and thereby confirm dispatch of 5000 boxes A+ Quality Nitrile Gloves which was ready stock. Relying on the assurance of the accused, the complainant paid sum of Rs. 17,64,000/- as per invoices issued by the accused. The delivery was delayed. The accused neglected calls of complainant. Due to which the complainant was compelled to visit the accused for delivery of goods. In spite of payment of goods were not delivered, the FIR was lodged.

3. The applicant preferred an application for anticipatory bail before the Sessions Court which was rejected by order dated 6th March, 2021.

4. Learned advocate for the applicant submitted that the applicant contacted Mr. Shoeb Khan and his business partner for the order placed by the complainant. Shoeb Khan intimated the applicant that he does the business in the name and style of Sabri

Enterprises. After receiving the amount from Fire Gaze Distributor Pvt. Ltd. the applicant transferred the amount of Rs. 4,81,600/- and 12,04,000/- to Sabri Enterprises. The total amount of Rs. 16,85,600/- was transferred to Sabri Enterprises. On 14th January, 2021, Mr. Shoeb Khan shared Tax Invoised dated 13th January, 2021, E-way bill dated 14th January, 2021 and Railway transport bill and railway parcel booking dated 14th January, 2021. On 16th January, 2021 the applicant was informed by the complainant that the goods did not reached Mumbai. The applicant made inquiry with Mr. Shoeb Khan and he gave excuse of pandemic situation. He assured that the goods will be loaded on 16th January, 2021 and delivered to Fire Gaze Distributors on 17th January, 2021. Despite promise by Mr. Shoeb Khan, the goods were not delivered. Upon making inquiry about the Railway transport bill (Bilty) dated 14th January 2021 and Railway parcel booking number, it was realized that the said documents were false and fabricated. The applicant and the complainant has conversation with Mr. Shoeb Khan who again promised the delivery of goods. Subsequently, all of them went to meet Shoeb Khan. He could not be found at the offices. The complainant forcefully took the cheque from the applicant for Rs. 20,14,000/- dated 19th January, 2021. The complainant and the applicant then again tried to contact Shoeb Khan and Atif, but they could not traced them. The complainant and his father lodged the

FIR against the applicant on 7th February, 2021. Mr. Atif gave cheque on behalf of Sabri Enterprises which were deposited by the applicant. The cheques were dishonoured. The applicant lodged the complaint against Shoeb Khan and Mr. Atif. The Police did not take cognizance. The applicant filed the private complaint, seeking action under Section 156(3) of Cr.P.C. The Court has issued notice to Bisrakh Police Station to lodge FIR. The bank statement of the applicant shows that the amount has been transferred by the applicant into the account of Sabri Enterprises. The applicant is willing to cooperate with the investigation. The custodial interrogation of the applicant is not necessary. There was no intention to cheat the complainant. The applicant himself is a victim at the instance of Shoeb Khan and Atif.

5. Learned APP submitted that the complainant was induced to part with the amount for delivery of goods. In spite of receipt of the amount, goods were not delivered. False representations were made to the complainant. The applicant has relied upon fabricated documents. Learned APP tendered the report of the Investigating Officer regarding investigation conducted by Police.

5. Learned Advocate for the intervenor submitted that the applicant is the sole proprietor of M/s. Ansari Trading Enterprises. By Whats-app promotion, he pretended to be seller of A+ Quality Nitrile Gloves and induced the complainant to purchase 5000 boxes

of Gloves for which payment of Rs.17,64,000/- was made with the promise to delivery of goods on the following day after the receipt of the payment. The accused issued invoices dated 14th January, 2021. The complainant parted sum of Rs. 17,64,000/- by bank transfer to the applicant/accused. The accused went to the extent of fabricating/forging Cargo receipt issued in the name and style of Mahavir Rail Cargo to gave false assurances of the complainant about dispatch of order through Railway Cargo. After followup, the complainant realized that the Cargo receipt was fake and no package were dispatched in lieu of the same. The accused issued E-way bills pursuant to the purchase of the goods. However, refrain from making the request GST amount with regards to the order. The accused acquired entire payment from the complainant including GST amount. The complainant visited the accused in Noida The accused issued a cheque for the sum of Rs. 20,14,000/- inclusive principle amount and compensation for default on the part of the accused with an intention to once again gave false assurances to the complainant thereby evading the repayment of all the amount causing loss to the complainant. The accused never intended to honour the cheque issued by him and deliberately left the date column blank to safeguard his interest. The accused himself sent an E-mail after issuing the said cheque instructing the complainant and his father not to deposit the cheque after they returned back to Mumbai. The father of complainant had received threat call from the person named Irfan, acting under the instruction of the accused.

6. From the documents on record it is apparent that on the basis of Whats-app messages forwarded in the Whats-app group by the applicant/accused, the complainant placed an order for the purchase of Gloves. The Whats-app message gave an indication that the applicant is dealing in goods. The amount of Rs. 17,64,000/- was parted to the applicant by the complainant. However, the goods were not delivered, nor the amount returned to the complainant. It is alleged that the applicant had issued a cheque and subsequently forwarded an E-mail that the cheque should not be deposited. During the course of investigation, the statement of the complainant and his father were recorded. The applicant is proprietor of Ansari Trading Enterprises. The place of his business is at Greater Noida. The Police proceeded at the place of the applicant for investigation. However, he was not found at the place of business nor at the place of his residence. The investigation revealed that the documents forwarded by the applicant to the complainant were fabricated. The document of Mahavir Rail Cargo and E-way bill, transport bill were found to be false. Inquiry was made with the transporter and it was revealed that the such goods were not transported. The accused has forwarded false bills with regards to delivery of the Gloves. The accused is frequently changing his address and he could not be traced. There is

every likelihood that the applicant and proprietor of Sabri Enterprises. Mr. Shoeb Khan and Atif had acted in connivance with each other to deceive the complainant. The information is also received that the applicant has also deceived the company situated at New Delhi namely “Drinksmart Delhi”. To avoid the payment of GST, the applicant has also forwarded credit note to GST Division. The claim of the applicant is that he made payment to M/s. Sabri Enterprises. The entire transaction appears to be suspicious Undisputedly, the entire payment was made to him and the complainant has not received the goods nor the payment. At this stage learned counsel for the applicant submitted that he would make the payment of Rs. 6 Lakhs by Demand Draft and the balance amount within one and half year. He disputed the claim of the complainant. Learned counsel for the intervenor submitted that the complainant’s claim is more than 20 Lakhs. The offer is not acceptable to the complainant. In view of the above, no case is made out for granting relief under Section 438 of Cr.P.C.

ORDER

(i) Anticipatory Bail Application No. 818 of 2021 is rejected and stands disposed of accordingly.

(ii) Interim application No. 1213 of 2021 is disposed of.

(PRAKASH D. NAIK, J.)