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

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1158 of 2020**
**WITH**
**INTERIM APPLICATION NO. 473 OF 2021**

Sanjay B. Mehta ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH**
**INTERIM APPLICATION NO. 473 OF 2021**

Ashok Kumar Sohanlal Garg … Intervener

**IN THE MATTER BETWEEN**

Sanjay B. Mehta ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sandeep Kekane a/w. Janvhavi Barve i/b. B. K. Barve & Co., Advocate for the Intervener.
Mr. Jehangir Khajotia, Advocate for the Applicant in ABA.
Mr. A. R. Kapadnis, APP for the Respondent – State.
PSI- Pradeep A. More, Sewri Police Station.

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**CORAM : PRAKASH D. NAIK, J.**
**DATE : 24th FEBRUARY, 2021.**

**PC :**

1. This is an application for anticipatory bail in connection with C.R. No. 181 of 2020, registered with Sewri Police Station for the offences punishable under Sections 406, 420 of Indian Penal Code, 1860 (“IPC” for short). The First Information Report (“FIR” for short) was registered on 19th October, 2020.



2. The case of the complainant is that on 28th March, 2018,

the applicant contacted the complainant to enquire about the rate of steel plates. Thereafter on 30th March, 2018 he represented that he wants to purchase the goods. Since the complainant was knowing the applicant he agreed to sell goods to him. The applicant placed order for steel plates. Goods were delivered from time to time to the applicant. Towards payment of the steel plates delivered to the accused, he issued cheques for amount of Rs.19,89,216/-. The complainant deposited the said cheques in his bank. However, the intimation was received from the bank that the account was closed on 17th October, 2019. The complainant alleges that the complainant had paid an amount of Rs.5,74,000/- to induce confidence in delivering the goods and thereafter the cheques were issued which were dishonoured on the ground that the account was closed.

3. Learned counsel for the applicant submitted that there is no element of cheating. It is commercial transaction. The applicant need not be subjected to custodial interrogation. The complainant has filed proceedings under Section 138 of Negotiable Instrument Act. There was no dishonest intention to cheat. It is submitted that in similar circumstances, the Supreme Court has quashed the proceedings on the ground that the dispute is of civil nature. He relied upon the Judgment in the case of ***G.Sagar Suri and Another V/s. State of Uttar Pradesh AIR 2000 SC 754*** and Judgment delivered

by ***Orissa High Court in the case of S. Jayaswami and Another V/s. State of Orissa and Another.*** He also relied upon the Judgment of Supreme Court in the case of ***Kolla Veera Raghav Rao V/s. Gorantla Venkateswara Rao and Another.***

4. Learned APP submitted that the dishonest intention was apparent right from inception. The applicant had no intention to make payment.

5. Learned counsel for the intervener submitted that merely because there was transaction of delivery of goods and some payment is made, it cannot be said that it is civil transaction. The applicant had introduced the complainant to deliver the goods. He has no intention to make payment. Cheques were issued inspite of knowing the fact that the account was closed. He shows the dishonest intention to cause wrongful loss to the complainant. There is no bar for initiating proceedings under Section 138 of N. I. Act and FIR under Section 406 and 420 of IPC. The process is not yet issued in the complaints under Section 138 of N.I. Act.

6. On perusal of the FIR, it is apparent that, undisputedly goods were delivered to the applicant. Initially, some payment was made. However, in respect to the delivery of substantial goods, ten cheques were issued by the applicant dated 11th November, 2019,

totally amounting to Rs.19,89,216/-. Learned counsel for the complainants submitted that opportunity was given to the complainant to resolve the dispute by making the payment. However, there was no response. Although cheques were issued on 11th November, 2019. The bank account was closed before that cheques were issued on account which was already closed, before issuance of cheques which shows that applicant had no intention to make payment. In the circumstances, no case for grant of anticipatory bail, is made out.

**ORDER**

(i) Anticipatory Bail Application No. 1158 of 2020, is rejected;

(ii) Interim Application No. 473 of 021 stands disposed of;

(iii) It is clarified the observation in this order, are only for considering this application and the Trial Court shall not be influenced by the same during proceedings.

**(PRAKASH D. NAIK, J.)**

This order is corrected as per Speaking to Minute order dated 3rd March, 2021