IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2282 OF 2021

Santosh Popat Chavan .... Applicant
v/s.
The State of Maharashtra and anr. .... Respondents

Ms. Madhavi Tavanandi for the Applicant.
Mr. Ajay Patil, APP for the State.
Mr. Ankur Pahade a/w. Mr. Anshuman Asare a/w.
Ms. Sayee Sawant for Respondent No.2.

CORAM: SARANG V. KOTWAL, J.

DATED : 24th SEPTEMBER, 2021.

P. C. :-

. The Applicant is seeking Anticipatory Bail in connection with C.R.No.685/2021 dated 26/08/2021 registered with Hadapsar Police Station, Pune under section 420 of the Indian Penal Code.

2. Heard Ms. Madhavi Tavanandi, learned counsel for the Applicant, Mr. Ajay Patil, learned APP for the State and Mr. Ankur Pahade, learned counsel for Respondent No.2.

3. The First Information Report (for short 'FIR') is lodged by Rampalat. On 23/12/2020, he has stated that he retired from army in December, 2017. He was in contact with the present Applicant in

2018. The informant was thinking of purchasing the land in Manjari. The Applicant showed him a plot at Survey No.126. It was admeasuring 02 gunthas. The Applicant induced the informant to invest in purchasing that land and to become his partner. The informant accepted his proposal. He was told by the Applicant that the agreement would be executed immediately. The FIR mentions that on 15/09/2018, the informant transferred Rs.15,00,000/- in the bank account of the Applicant through RTGS. Using that amount, the Applicant started construction. But he did not enter into any agreement as promised by him. The Applicant demanded further amount for construction. He told the informant that if the additional amount is not given, the construction would be stopped completely. Therefore, the informant had withdrawn Rs.16,25,000/- from his bank account and had given the same in cash to the Applicant. In all, he had given Rs.31,25,000/- to the Applicant. The Applicant did not enter into an agreement and he misappropriated the said amount. On this basis, the FIR is lodged.

4. Ms. Madhavi Tavanandi, learned counsel for the Applicant submitted that there was no proof or acknowledgment of payment of Rs.16,25,000/- in cash. There is no record of that. She submitted that

it is not believable that within one month from first payment, the Applicant would ask for and would be paid Rs.16,25,000/-. She has submitted that there are RBI rules for withdrawal of large amounts. There is nothing to show compliance of those rules. She submitted that there is gross delay in filing of the FIR. She further submitted that the liability is to the tune of Rs.15,00,000/- out of which the Applicant had paid Rs.5,00,000/- and the Applicant is willing to pay balance amount of Rs.10,00,000/-. The figure mentioned in F.I.R. is not correct.

5. Mr. Ankur Pahade, learned counsel for the Complainant submitted that Rs.5,00,000/- was paid in respect of different transaction and it has nothing to do with the allegations in the FIR. He submitted that the Applicant promised to enter into an agreement but it was not executed. He had misappropriated the amount. He submitted that the informant has lost his entire amount of Rs.31,50,000/-. He further submitted that there is no delay in lodging of the FIR. The informant was pursuing the police authorities right from the year 2019 for lodging FIR. He had also initiated proceedings under Section 138 of the Negotiable Instruments Act and therefore, there is no delay on the part of the informant.

6. Learned APP invited my attention to the complaint filed by the first informant under Section 138 of the NI Act. In that complaint, the total amount mentioned is Rs.31,25,000/-. The investigation has revealed that there was no reply given by the Applicant to the statutory notice under NI Act denying the liability of entire amount of Rs.31,25,000/-.

I have considered these submissions. The allegations in the FIR have made out a case of cheating and misappropriation. The Applicant had not denied this liability by giving any reply to the statutory notice under section 138 of Negotiable Instruments Act. Therefore, at this stage, there is no reason to doubt the allegations of the first informant that the Applicant had misappropriated the amount. As far as question of RBI guidelines is concerned, it is a separate subject matter; but that will not absolve the Applicant from his deeds. Custodial interrogation of the Applicant is necessary to trace the amount taken by him. Therefore, no case for grant of Anticipatory Bail is made out. Hence, the Application is rejected.

PREETI
H JAYANI

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(SARANG V. KOTWAL, J.)