IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2877 OF 2021

HEMANT VRAJLAL ZAVERI …..Applicant.
V/s
THE STATE OF MAHARASHTRA …..Respondent

Mr. Girish Kulkarni a/w Mr. Aditya Mithe a/w Ms. Neha Pandya for the Applicant.
Mr. Ajay Patil, APP for the Respondent/State.
Mr. Abhijit Mantri for the Intervener.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 06, 2021

P.C.:-

1] Applicant is seeking pre-arrest bail in C.R. No. 924 of 2021 registered with Mulund Police Station, Mumbai for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

2] Mr. Girish Kulkarni, learned Counsel for the Applicant would urge that the alleged offence is claimed to have been committed in between October 2015 to June 2018. He would claim that the business of the Applicant has gone in financial rough weather and as such, he suffered financial losses, thereby unable to pay the debtors like complainant from whom he has purchased jewelry for trade. He would claim that Applicant has bonafide intention to pay the amount and since his liability has gone up more than the assets, matter is presently pending before the National Company Law Tribunal ("NCLT"). He would further claim that complainant has lodged his claim in the pending proceedings before NCLT for resolution and that being so, custodial interrogation of the Applicant is not necessary.

3] Further contention of the learned Counsel for the Applicant is, Supreme Court in similar matter against the Applicant has also granted interim relief of which this Court should be sensitive to. As such, it is prayed that, Applicant needs to be protected in the event of arrest.

4] Mr. Patil, learned APP opposed the prayer on the ground that Applicant since beginning was having intention to commit the offence of cheating and criminal breach of trust of which ingredients are very much satisfied. He would claim that Applicant is a habitual offender and is involved in serious economic offences, thereby causing cheating and criminal breach of trust. The mode and manner in which the offence is committed has been duly demonstrated by learned APP so as to make out a strong case against the Applicant.

5] Considered submissions.

6] At the outset, it is required to be noted that Applicant has not denied the transaction and his failure to pay the amount as against the gold jewelry received by him.

7] In the aforesaid background, if we appreciate the conduct of the Applicant, following offences are registered against him with Sadar Police Station, Nagpur City viz. (i) C.R. No.24 of 2020 for the offence punishable under Sections 409, 406, 420, 34 of the IPC read with Section 3 of the MPID Act, (ii) C.R. No.182 of 2020 for the offence punishable under Sections 465, 467, 468, 471 of the IPC and (iii) C.R. No.12 of 2018 for the offence punishable under Sections 406, 420 and 34 of the IPC. Even if the claim of the Applicant is appreciated that he has been released by Nagpur Bench of this Court in Criminal Application (ABA) No.241 of 2018 and also has been temporarily released in Special Leave Petition (Criminal) Diary No.10864 of 2020 arising out of the judgment and order dated 26/3/2020 in Criminal (ABA) No.106 of 2019 passed by the High of Judicature at Bombay, Nagpur Bench at Nagpur, this Court is required to be sensitive to the fact that the Applicant is in a habit of commission of such financial offences. The modus operandi adopted by the Applicant has been allegedly established from the record through learned APP, thereby depicting that the Applicant in a planned manner has cheated number of jewelers by promising them payment of consideration for the gold jewelry supplied. Applicant, initially, used to honour the commitment of consideration as against supply of gold jewelry. However, after gaining confidence, he used to delay the payments and as such liability mounted in each of the offence which is in crores, like in the present case. In both the cases, Applicant has received gold jewelry, marketed the same through his Firm, received consideration but has not paid the suppliers. In Criminal Application (ABA) No.241 of 2018, Nagpur Bench of this Court ordered protection in view of the fact that consideration was duly paid in the offence which was registered.

8] The Applicant as such was called upon to deposit the amount which is based on documentary evidence which he has failed to.

9] Though NCLT has ordered moratorium under Section 143 of IBC vide order dated 16/12/2019 that by itself will not absolve the Applicant of his criminal liability. The intention of the Applicant to commit offence of cheating and criminal breach of trust can be inferred on the face of his conduct narrated in the FIR. That being so, no case for anticipatory bail is made out.

10] Application for anticipatory bail stands rejected.

(NITIN W. SAMBRE, J.)