IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2133 OF 2019
WITH
INTERIM APPLICATION NO.1666 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO.2133 OF 2019

Arun Kumar Langanathan ...Applicant
Versus
The State of Maharashtra ...Respondent

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Mr. Shime Mohamed and Ravi Mishra i/b. M/s. MZM Legal for the Applicant.
Mr. Kushal More with Ms Marmita Shah for the Intervenor in IA/1666/2019.
Mr. S.V. Gavand, APP for the Respondent -State.
Mr. Vijay Mohite, PSI, Parksite police station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th OCTOBER, 2021.

P.C.:-

This is an application under Section 438 of the Code of Criminal Procedure, 1973 filed by the Applicant apprehending his arrest in Crime No.I-295 of 2018 registered with Park Site Police Station, Mumbai for the offences punishable under Sections 406, 420 r/w 34 of the IPC.

2. Learned counsel for the Applicant submits that the Applicant

is an ex-employee of the accused No.1, a Dubai based Company known as ‘Material Coast Trading LLC’. The Intervenor had entered into a business transaction with A1-company on 29/12/2015 for supply of 1530 metric ton of PVC material. The A1 company supplied 1000 mt of PVC material. He submits that the A1-company and the Intervenor mutually agreed to cancel the transaction in respect of 530 mt i.e. outstanding quantity of PVC and to adjust the amount available with A1-company towards second transaction entered on 2/6/2016. Learned counsel for the Applicant submits that the Applicant had resigned on 15/05/2016, which was much prior to the second transaction dated 02/06/2016. Learned counsel for the Applicant submits that the Applicant was in no way concerned with the alleged transaction which took place subsequent to his resignation.

3. Learned counsel for the Intervenor disputes that the Applicant was only an employee and that he has resigned and contends that the Applicant is a business partner of accused No.1. He submits that the Applicant had induced the Intervenor to enter into a business transaction with accused No.1, with an intention of cheating. He further submits that the Applicant had travelled abroad without prior permission of the Court and had thus, violated the condition of interim bail granted by the learned Sessions Judge.

4. Perused the records and considered the submissions advanced by the learned counsel for the Applicant, learned counsel for the Intervenor and learned APP for the Respondent-State.

5. The aforesaid crime against the Applicant was registered pursuant to the FIR lodged by the Intervenor, who shall be hereinafter referred to as the complainant. The FIR reveals that the complainant had entered into a contract dated 29/12/2015 with accused No.1, a Dubai based company. Mr. Mohammed Reza Esparvarin and Mr. Yakoob Ali are the promoters of the said company. The complainant, who is a Director of companies known as 'JJ Poly Impex Pvt. Ltd' and 'JJ Poly Plast Pvt. Ltd.' had entered into a business transaction with accused No.1 company on 29/12/2015, for supply of 1530 metric ton of PVC material. Pursuant to the said transaction an amount of 4,97,500 USD was deposited in the account of accused No.1-Company. Accused No.1-Company supplied 1,000 metric ton of PVC material. The records prima facie indicate that the complainant and the accused No.1 had cancelled the transaction in respect of 530 mt i.e. outstanding quantity of PVC. The complainant and the accused No.1 entered into a second transaction dated 02/06/2016 for supply of 3015 metric ton of PVC material. It was agreed that an amount of 77524 USD (i.e. 71977 USD

available with accused No.1 company towards outstanding quantity of PVC and an amount of 5547 USD towards delayed shipping cost) would be adjusted in the second transaction dated 02/06/2016. The complainant claimed that he had transferred 416926 USD in account of the accused No.1-Company towards supply of 3015 of PVC. The said material was to be supplied by the end of June-2016. The accused No.1 did not supply the goods and subsequently cancelled the second order and refunded 54500 USD. The grievance of the complainant is that despite repeated request accused No.1 company has refused to refund the balance amount, which has resulted in filing of the FIR.

6. The material on record prima facie indicates that the Applicant herein had already resigned on 15/05/2016 i.e. much prior to the second transaction dated 02/06/2016 between the complainant and the accused No.1-Company. Prima facie there is no material on record to indicate that the Applicant was a business partner or that he was involved in any manner in running business of the accused No.1 company. There is no material on record to prima facie indicate that the Applicant had entered into any correspondence with the complainant as regards the said business transaction. The emails referred to by the learned Sessions Judge were between the complainant and the directors of accused No.1-company and Sunil Suri. It is seen that copy of

the said email was not sent to the Applicant on his personal email address but were marked on his earlier official email address. Since the Applicant had already resigned, he would have no access to the official email address.

7. It may be mentioned that in the absence of fraudulent or dishonest intention, mere breach of contractual obligation would not constitute cheating. In the instant case the FIR does not prima facie disclose that the Applicant had induced the complainant or that he intended to cheat the complainant since inception. There is also no prima facie material to show that any amount paid by the complainant was transferred in the name of or in the account of the Applicant and that he had misappropriated the amount entrusted to him.

8. It is also on record that the complainant had lodged a complaint before Sharjah Court in respect of the same transaction, and that the said complaint has been closed as a civil dispute. Furthermore, a civil dispute is pending between the complainant and accused No.1 before Sharjah Court. Mr. Sunil Suri, who is the co-accused in this crime and who was allegedly involved in inducing the complainant in entering into business transaction with accused No.1-Company has been granted bail in view of the consent term entered between the complainant and

the said accused.

9. Considering the nature of dispute, the Applicant was granted interim bail. Learned APP concedes that the Applicant has reported to the Investigating Officer and co-operated with the investigation. Learned counsel for the complainant submits that the Applicant had travelled abroad without permission of the Court. The records reveal that the Applicant had tendered unconditional apology and that this court has condoned the said lapse while granting interim bail. Hence, the bail cannot be declined solely on the ground of violation of condition of interim bail granted by the Sessions Court.

10. Considering the above facts and circumstances, in my considered view this is not a case which warrants custodial interrogation. Hence, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.I-295 of 2018 registered with Park Site Police Station, Mumbai, the Applicant be enlarged on bail on furnishing bail bonds of Rs.25,000/- with one or two sureties in the like amount;

(ii) The Applicant shall report to the Investigating Officer as and when required;

(iii) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner;

(iv) The Applicant shall keep the investigating officer informed of his current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

11. The application stands disposed of.

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12. In view of disposal of the anticipatory bail application, this application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)