

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

ANTICIPATORY BAIL APPLICATION NO. 2426 OF 2019

Rakesh Himmatlal Bagadiya and anr. ...Applicants

Versus

The State of Maharashtra ...Respondents

None for the Applicant.

Mrs. S. D. Shinde, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 21st AUGUST, 2021

PC:-

1. None present for the applicant.
2. Heard Mrs. Shinde, the learned APP, for the State.
3. The gravamen of indictment against the applicants is that the applicants induced the first informant to part with the gold ornaments, approximately weighing 10.75 gm. and valued at Rs.70,600/- on the promise that the applicant will give her two gold rings studded with diamonds, within 10 days of the said delivery of the gold ornaments. However, the applicants did not perform the said promise. Eventually, the postdated cheques issued by the applicants were also dishonored. Thus, a legal notice was issued to the applicants. In the reply thereto the applicants had set up a distinct transaction and, hence, the informant lodged report leading to registration of

CR No.79/2019, for the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code, 1860 ("the Penal Code").

4. The applicant preferred an application for pre-arrest bail before the learned Sessions Judge, being ABA/487/2019. In the said application, the first informant appeared and filed an affidavit to the effect that the dispute between the parties was settled and the applicant had paid her a sum of Rs.70,000/-. The learned Sessions Judge took note of the said affidavit. However, the learned Sessions Judge was of the view that the gravity of the offence would not be diluted by the payment of the said amount by the applicants to the first informant. Hence the application can be rejected.

5. By an order dated 15th November, 2019, this Court after adverting to the fact that the complainant had filed an affidavit to the effect that the dispute has been settled and she has received the sum of Rs.70,000/-, was persuaded to grant interim relief.

6. Evidently, the genesis of the transaction is in the alleged promise made by the applicants to return two diamond studded gold rings of deluxe quality in lieu of the old gold ornaments which the first informant allegedly handed over to the applicants. In the backdrop of the nature of the transaction

and the facts the applicants had allegedly issued two post-dated cheques and which were dishonored and there was exchange of notices between the parties, it would be rather difficult to draw an inference, *prima facie*, that the intention of the applicants was dishonest since the inception of the transaction. Eventually, the parties have settled the dispute and the first informant has been paid the sum equivalent to the value of the ornaments. In any event, custodial interrogation of the applicants in the peculiar circumstances of the case is not warranted.

7. For the forgoing reasons, this Court is persuaded to allow the application and confirm the interim order.

8. Hence the following order:

: ORDER :

- (i) The application stands allowed.
- (ii) Interim order dated 15th November, 2019 stands confirmed on the terms and conditions incorporated therein.
- (iii) In addition, in the event charge-sheet is lodged, the applicants shall appear in the consequent proceedings before the learned Magistrate regularly.

[N. J. JAMADAR, J.]