Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2699 OF 2019

LAXMANLAL GAMANA RAM ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Priyal G. Sarda for the applicant.
Mr. N.B. Patil, APP for the State.

C0RAM : M. S. KARNIK, J.

DATE : SEPTEMBER 30, 2021

P.C. :

Heard learned counsel for the applicant.

2. This is an application for pre-arrest bail in respect of First Information Report No. 467 of 2019 (‘FIR’ for short) registered on October 3, 2019 with Dahisar Police Station under Sections 420, 406, 504, 506 read with 34 of the Indian Penal Code.

3. The complainant deals in making of gold jewellery. He was acquainted with one Pratapchand Lohar for more than 22 to 25 years and they had business relations. Pratapchand Lohar introduced the applicant to the complainant. Pratapchand Lohar

requested that the applicant is in need of employment. Accordingly, the complainant helped the applicant to get a job with 'Ambika Jewellers' at Vasai. Thereafter, in the month of December, 2015, Pratapchand Lohar opened the shop named 'Om Jewellers' for the applicant. Pratapchand Lohar requested the complainant to make gold jewellery for the applicant. The complainant entrusted 350 gms. jewellery valued at Rs.10,11,474/- to the applicant. The applicant paid to the complainant a sum of Rs.4,45,641/-. He promised to pay balance amount of Rs.5,65,833/- within a period of 12 months. Pratapchand Lohar and Kantilal Lohar assured that they would guarantee the repayment. The complainant tried to contact the applicant on his mobile but the same was switched off. When the complainant visited the shop of the applicant sometime in April, 2016, he found the shop to be closed. He alleges that the applicant had cheated other persons as well and closed the shop overnight and since then his whereabouts are not known. The complainant tried to recover the said amount from the guarantors. He was, however, threatened by the guarantors Pratapchand Lohar and Kantilal Lohar. The FIR ultimately came to be filed on October 3, 2021.

4. Learned counsel for the applicant submitted that Pratapchand Lohar and Kantilal Lohar are granted pre-arrest bail by the Sessions Court at Dindoshi vide order dated July 20, 2021. He submits that the shop 'Om Jewellers' in fact belonged to Pratapchand Lohar and the applicant was only a manager. According to him, even complaint records that the said Pratapchand Lohar stood as a guarantor which goes to show that the applicant has nothing to do with the shop in question and the entire liability as well as responsibility is of Pratapchand Lohar. He submits that as Pratapchand Lohar and Kantilal Lohar are granted pre-arrest bail, the role of the applicant is much lesser and in any case, on the principle of parity the applicant deserves to be released on pre-arrest bail. He further states that there was no intention to cheat as the applicant had in fact paid an amount of Rs.4,45,641/- and the balance could not be paid as the applicant was not keeping well. According to him, this is a civil dispute as the complainant is seeking to recover the balance amount.

5. Learned APP opposed the application. The investigating officer is present and he produced investigation papers.

6. The complaint reveals that the gold ornaments weighing 350 gms. were handed over to the applicant. The record produced by the APP reveals that the leave and license agreement in respect of the shop in question where the applicant was conducting business in the name of 'Om Jewellers' was for the period February 10, 2015 to November, 2017. The leave and license agreement is signed by the applicant as a licensee. The principal responsibility of repaying the entire amount was that of the applicant. The complaint reveals that the mobile of the applicant is switched off and even the shop in question is shut since April, 2016. The gold ornaments prepared by the complainant were handed over sometime in December, 2015. No doubt, the applicant had paid a sum of Rs.4,45,641/- but the conduct of switching off the mobile and closing the shop overnight is something which cannot be ignored. After closing the shop overnight, the whereabouts of the applicant are not known and the complainant was not able to establish communication with him. It therefore cannot be said that the ingredients of the offences alleged against the applicant are not attracted. The application is therefore dismissed.

(M.S.KARNIK, J.)