IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1540 OF 2021

MR. NITIN S/O SEOOMAL VARLANI
VERSUS
THE STATE OF MAHARASHTRA
…..
Advocate for Applicant : Mr. A. M. Manglani
APP for Respondent-State : Ms. Vaishali Patil Jadhav.
Advocate for Assit to APP : Mr. Shaikh Mazhar A. Jahagirdar
…..

WITH

CRIMINAL APPLICATION NO.162 OF 2022
IN ABA/162/2022

AKBAR KALUBHAI SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
…..
Advocate for Applicant : Mr. Shaikh Mazhar A. Jahagirdar
APP for Respondent-State : Ms. Vaishali Patil Jadhav.
Advocate for Respondent No.2 : Mr. A. M. Manglani
…..

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 27-01-2022.

ORDER :

1. Criminal Application No.162 of 2022 has been filed for assist to learned APP. Said application is allowed and disposed of.

2. In ABA No.1540 of 2021, the applicant is apprehending his arrest in connection with Crime No.263 of 2019, registered with Rahata Police

Station, District Ahmednagar, for the offence punishable under Section 420, 406 of the IPC.

3. Heard learned Advocate Mr. A.M. Manglani and learned APP Ms. Vaishali Patil Jadhav well assisted by learned Advocate Mr. Shaikh Mazhar A. Jahagirdar.

4. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated though entire amount of the transaction has been paid by him. The FIR shows that there was transaction in respect of sale of pomegranate between the informant and the present applicant. In fact, the entire transaction had taken place between the brother of applicant Sushil Varlani and one JK. The applicant has no concern with the said transaction at all. He is not the proprietor of Sushil Traders Agra. Lodging of the FIR against the applicant is nothing but an attempt to arm-twist the applicant's brother to make him succumb to illegal demands of the informant. There was no transaction between the applicant and the informant, therefore, there is no question of inducement by him to the informant to send his fruits for selling. Brother of the applicant had received call on his mobile on 12-07-2019 introducing himself to be a person as JK who claimed that he is fruit trader in Maharashtra

and asked Sushil, as to whether he is interested in selling pomegranate fruits. Taking into consideration the firm which the brother of the applicant is running nationwide, he agreed. Thereafter, said JK had transported pomegranates through Munna Transport. The details have been given and the amount of total 2875 boxes was to the tune of Rs.8,66,125/- based upon the photographs of transport Bilty and the information in whose account the amount is to be paid, the charges have been paid through RTGS or Axix Bank and HDFC as well as ICICI Bank accounts. Now the informant is unnecessarily harassing and even had circulated a suicide note on 22-10-2019 on What's App Messenger. Applicant's brother had given complaint application to Superintendent of Police, Agra (Uttar Pradesh). When no action was taken, he has filed application under Section 156 (3) of CrPC against one JK, Anwar and present informant before Judicial Magistrate, Agra (Uttar Pradesh) for impersonation and cheating. There was no question of non payment of amount and cheating by the applicant. Even if for the sake of arguments it is accepted that there was such transaction, yet it will give a result to civil litigation and not criminal one. The applicant, therefore, deserves to be protected by anticipatory bail.

5. Learned APP Ms. Vaishali Patil Jahdav well assisted by learned Advocate Mr. Jahagirdar, strongly opposed the application and submitted that the charge-sheet is filed as the applicant is absconding. He could not be traced out. Statements of those persons who were knowing the applicant have been recorded. But they have said that now they do not know the whereabouts of the applicant. The informant has stated that he had sold pomegranates worth Rs.16,59,245/-. That means, that much amount was outstanding from the applicant out of which the applicant has given only amount of Rs.3,50,000/- and Rs.1,10,000/- in his HDFC as well as ICICI account respectively. Rest of the amount he has not paid. The transaction was with the applicant only who is also looking after the business of Sushil Traders. Therefore, his custody is required further in order to have thorough investigation. Though he had appeared before the police and his statement was also recorded, he is absconding. He appeared only when the interim relief was given to him by the leaned Additional Sessions Judge, but after his application was rejected, he has gone missing. The conduct of the applicant has been taken a note of by the learned Additional Sessions Judge, and therefore, the application was rejected. Now there is no change in the circumstance. The applicant who is

absconding cannot claim relief under Section 438 of CrPC.

6. At the outset, it is to be noted that whatever documents those have been produced on record by the applicant to show the payments, are in scattered form. The best way was to produce the accounts and ledger. Now he is coming with a case that his brother had received some phone call, and thereafter, the transaction started. Defence cannot be considered at this stage. Further, when an opportunity was given to the applicant to co-operate with the investigation, he has not fully co-operated. Specific note has been taken about the same by the learned Additional Sessions Judge. It was seen by the learned Additional Sessions Judge that police were not able to apprehend the applicant though they had visited to Agra. It was then stated that even the interim order was not followed by the applicant and he has not observed the conditions those were imposed. Applicant had not sought modification of the order of interim bail and went absconding since 2019. The charge-sheet came to be filed under Section 299 of CrPC against him, and therefore, taking into consideration the said conduct and the fact that he jumped the interim anticipatory bail also, the application was rejected. This Court is bound to take note of this conduct by the

applicant. Charge-sheet is definitely filed under Section 299 of CrPC and there are statements of those persons from Agra who had stated that they were knowing the present applicant and had not seen him since many days.

7. Now coming back to the transaction, there are different versions, as aforesaid. The applicant is saying that only amount of Rs.8,66,125/- was due, whereas the informant states that he had sold pomegranates worth Rs.16,59,245/-, and out of that only amount of Rs.2,00,000/- were given and amount of Rs.14,59,245/- was still remaining. This transaction may give rise to civil litigation, but when there is the thin border with thin elements of cheating and also as regards the pomegranates were concerned, they were sent under trust/entrusted, then the applicant, with whom as per the contention of the informant transaction was, bound to pay the price of the same. Therefore, merely by saying that the case would only fall under civil side, the application cannot be granted. The point will have to be left open for consideration of the Trial Court. Further angle can also be considered that when the informant says that the transaction which he had made, was with the applicant, who had represented himself to be the proprietor of Sushil Traders and now

the applicant is coming with a case that he is not the proprietor but his brother is. This fact will have to be considered from the angle of allegations of cheating. Thus, when the applicant is stated to be absconding and there is evidence showing that the police had tried to arrest him, but his whereabouts could not be found, then this is not a fit case where the extraordinary powers can be exercised. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-