IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 ANTICIPATORY BAIL APPLICATION NO.108 OF 2021

AVINASH VIJAY VAIRAT
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. S. S. Jadhav h/f Mr. Kasar Rajendra S.
APP for Respondent – State : Mr. B. V. Virdhe
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04.05.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.804 of 2020 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 406, 420 of Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Jadhav holding for learned Advocate Mr. R. S. Kasar for the applicant and learned APP Mr. B. V. Virdhe for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that it has been lodged by one Sunil Navsaji Bomble, who is practicing Doctor at Nanded. In March,

2019, he had taken search on internet about Laproscopic Instrument System and then within few days, he received two to four phone calls by the dealers. Out of that, the applicant was one of the dealer, who disclose that he is the owner of Vijay Surgical Private Limited, Pune and he supplies various instruments to the medical practitioners. He promised that he would supply instrument which was searched by the informant at a reasonable rate. The informant told him that he should come down to Nanded if possible and then would discuss about the instrument. Accordingly, the applicant had met him in 2019. As per the requirement of the instrument, he booked one instrument of which the cost was disclosed as Rs.1,44,580/-. Informant gave him cash of Rs.35,000/- and rest of the amount was transferred online. In July, 2019, the applicant had given phone call to the informant and stated that the unit that he had ordered would be available between 25.08.2019 to 30.08.2019, however, its price is Rs.4,32,000/- and if he is in need of that, he should book the instrument by 30.07.2019 by giving amount of Rs.50,000/- and 50% of the cost would be required to be deposited from 10 days of the booking. Accordingly, the informant had given the said amount. Amount of Rs.2,00,000/- was given on the account of the company of the applicant by R.T.G.S., however, the instrument was not supplied. The informant says that he had contacted the applicant many times, but the delivery of the unit was not given. Ultimately, the informant asked him to return his amount of Rs.2,50,000/-. Applicant told that he should wait for one month and if he is not believing him, he would send a cheque. Accordingly, on 01.01.2020, the applicant had sent him cheque worth Rs.2,50,000/-, however, on the cheque it was written that it is only for the security purpose. By taking legal advise, the informant had deposited the said cheque for encashment, however, the said cheque got dishonoured. Informant contacted the applicant and told him that he would lodge case under Section 138 of the Negotiable Instruments Act, but applicant told that he should wait. He allowed a month to go and then by giving a letter, it was again promised that he would pay the amount of Rs.2,50,000/-. Informant, therefore, says that by giving evasive answers and by not supplying the unit even after taking amount of Rs.2,50,000/-, he has been cheated.

4. It will not be out of place to mention here that by order dated 13.04.2022 when submissions on behalf of the applicant were heard, the applicant was ready to settle the matter and give the amount for which the informant states that he has been cheated. Statement was then made that the informant is asking more and in order to show the *bona fides* the applicant is ready to deposit the amount in this Court.

Accordingly, the voluntary statement was made that the applicant would deposit Rs.2,75,000/-. The amount has now been deposited in this Court.

5. Though the learned APP is strongly opposing the application stating that the conduct on the part of the applicant would clearly show that he had the intention to cheat since beginning and had even allowed the cheque to be bounced, the discretionary relief need not be granted.

6. From the contents of the FIR, as aforesaid, it can be seen that the present applicant had given the cheque for Rs.2,50,000/-. Though it was stated that it was for security purpose, it could have been definitely presented for encashment. Informant even says that he had taken legal advise and then had deposited the said cheque for encashment and thereafter, it was got dishonoured. Merely by saying that he contacted the applicant and told that he would lodge the compliant under Section 138 of the Negotiable Instruments Act, the informant has not taken that step. Why he again believed in what the applicant is saying is a question. Even after the filing of such case there can be compromise if at all the amount is given. Therefore, the question is since when the informant thought that he has been cheated. He could have either lodge the said case under Section 138 of the Negotiable Instruments Act or lodge a

recovery suit. Whether ingredients of Sections 420 or 406 of Indian Penal Code are attracted is a question here and another fact is that Section 420 of Indian Penal Code will not go along with Section 406 of Indian Penal Code. One require intention to cheat since beginning and another requires that there should be trust in a way that absence of intention to cheat and then thereafter misappropriation of said amount. Under such circumstance, when the amount is now deposited in this Court, the custodial interrogation of the applicant is not necessary. He deserves to be released on anticipatory bail. Hence, the following order :-

ORDER

I) Application stands allowed.

II) In the event of arrest of applicant – Avinash Vijay Vairat in connection with Crime No.804 of 2020 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 406, 420 of Indian Penal Code, he be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

III) He shall not tamper with the evidence of the prosecution in any manner.

IV) He shall not indulge in any criminal activity.

V) Learned Registrar (Judicial) to transfer the amount deposited by the applicant to the Court of Chief Judicial Magistrate, Nanded and the disposal of the same would be under Section 452 of the Code of Criminal Procedure.

[SMT. VIBHA KANKANWADI, J.]

scm