

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.348 OF 2022

PANDURANG DHONDIRAM PATIL HUJURE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. A. A. Yadkikar
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
21-04-2022**

**Date of Pronouncing the Order :
02-05-2022**

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.40 of 2022, registered with Khultabad Police Station, District Aurangabad, for the offence punishable under Section 420 of Indian Penal Code.
2. It will not be out of place to mention here that when the matter was on board on 25-03-2022, a statement was made on behalf of the applicant that in order to show his bonafides the applicant is ready to deposit amount of Rs.6,10,000/- within a period of two weeks. In view of the said voluntarily statement, interim protection was granted, however, the applicant had not deposited the said amount. Thereafter, he changed the Advocate and when it was pointed out that the amount has not been deposited, the interim protection was not

continued on 12-04-2022.

3. The learned Advocate now appearing for the applicant submits that in fact there appears to be some communication gap which had led to the statement by the Advocate earlier representing, in fact no amount was due from the applicant to the informant and there was no question of depositing any amount. Even if for the sake of argument it is accepted that some amount was due, that would have been cause of action on the civil side, but it cannot be said that it has led to the any action under criminal law. The applicant had taken contract for erecting jaggery manufacturing unit. The quotation that was given was for Rs.13,61,000/-. It was negotiated and it was then decided for Rs.12,75,000/-. According to the informant he has given amount of Rs.11,62,578/- to the applicant, but that is not a correct figure. The applicant was the first person to raise the dispute by giving notice dated 06-10-2021 to the informant and he has given all the details. He had incurred about Rs.8,77,000/- on the erection and remaining amount was to be paid by the informant itself. When that amount was demanded, the informant started saying as to where is the agreement. Threats were given, and due to the threats the applicant had not come to

the place of site from Kolhapur. There is no question of cheating by the applicant. After the receipt of the said notice, it appears that the informant has concocted a story and then lodged the report. There is huge delay in lodging the report. The custodial interrogation is not necessary. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP has strongly opposed the application and submitted that the conduct of the applicant can be seen though he had promised to deposit the amount, he has not deposited. No sympathy can be shown to such person. The police papers would also show that twice notice under Section 41-A of the Code of Criminal Procedure was given to him, however, he has not remained present. Ultimately by seeking permission from higher authorities, the Investigating Officer had gone to Kolhapur for arresting him, but he could not be found. Even after the interim protection was granted by this Court attendance was granted, yet he never remains present before the Investigating Officer. As regards the merits of the case are concerned, as per the agreement it was decided that the informant would spend Rs.12,21,000/- and according to the informant up till now he has spent Rs.11,62,578/-, but the accused has done the work worth Rs.5,52,666/-. In spite of

notice when the applicant is not ready to come forward, then there is substance in say by the informant that the applicant has cheated him. It is not the case only of the civil nature but the intention has to be gathered. The applicant has produced on record the receipts of the expenses which he had incurred for stay and meals of the applicant as well as his men who had come from Kolhapur for the work. It was in fact in addition to what was agreed. Custodial interrogation is therefore required for the purpose of investigation.

5. Most of the contents of the FIR have been reproduced earlier, however, the police papers do show that a complaint application was filed by the informant to Police Station on 27-11-2021 and along with the complaint application he had produced documents showing the transfer of amount by him by RTGS to the applicant, the quotation that was given by the applicant to informant. It appears that in pursuant to the said complaint application, a notice was given to the applicant on 17-12-2021 asking him to remain present before the inquiry officer. It appears that after receipt of the said notice, reply was given by the applicant through his Advocate and he did not remain present before the inquiry officer. No doubt it appears that the same Advocate had sent notice on 06-10-2021 to the

informant on behalf of the present applicant and the contents of that notice and reply dated 23-12-2021 are almost same. There was no reason for the applicant to avoid to come and submit for the inquiry, but it appears that when he did not remain present, the FIR came to be lodged on 31-01-2022. Thereafter, also on 09-02-2022 notice under Section 41-A (1) of Cr.P.C. was given to the applicant, but the applicant did not remain present. He has not given any kind of explanation in his application as to why he had not co-operated the Investigating Officer. He was called upon to remain present on 16-02-2022, but he approached the Additional Sessions Judge on 28-02-2022 for anticipatory bail. It came to be rejected on 08-03-2022. In the meantime, the Investigating Officer had gone to Kolhapur by seeking permission from the higher authority and there are documents to the effect that the applicant could not be found.

6. Now as per the FIR, the applicant has paid amount of Rs.11,62,578/- that is supported by documentary evidence as well as statements of the witnesses who had witnessed tender of amount by the informant to the applicant. No doubt, the remedy would also lie under Civil Act, but the conduct is also required to be considered. When in spite of issuing notice under Section 41-A of Cr.P.C. if the

applicant is not remaining present, he does not deserve sympathy. So also he made voluntary statement about deposit of the amount but has not abided by. He might be having his own reasons in respect of his earlier Advocate, but that cannot be the ground. If he wanted to enjoy the interim protection, he ought to have abided by the statement. The facts of the case do not require use of extraordinary discretionary powers of this Court under Section 438 of Cr.P.C. in favour of the applicant. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.