IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.575 OF 2022
WITH APPLN/1749/2022 IN ABA/575/2022

DARSHAN SINGH RANA
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. S. N. Dudhate holding for
Advocate Mr. Vijay B. Jogdand Patil
APP for Respondent/State : Mr. V. M. Kagne
Advocate for complainant : Mr. Girish Rane, Advocate holding for
Advocate Mr. R. B. Ade
...

CORAM : S. G. MEHARE, J.

DATE : 05-08-2022

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for respondent/State with learned counsel assisting him.

2. The applicant is seeking bail under Section 438 of the Code of Criminal Procedure in Crime No. 0796 of 2021 registered with CIDCO (Aurangabad urban) Police Station, Aurangabad, for the offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

3. The matter was heard on 06.05.2022. At the time of hearing of the application, on behalf of the applicant, a statement was

made that he is ready to deposit the amount with the bank in order to show *bona fides*. Believing his statement, the interim protection was granted to the applicant with a condition that he should honour his voluntary statement. On 16.06.2022, the learned counsel for the applicant made a statement before the Court that he could not contact the applicant; hence, he sought the time. Time was granted to him. On 01.07.2022, the matter could not be heard due to the paucity of time. Then on 18.07.2022, the hearing was adjourned at the request of all the parties. On 21.07.2022, the learned counsel for the applicant submitted that due to the Covid-19 pandemic, the business of the applicant had been affected, and he was in financial crisis; hence, he could not deposit the amount as directed by this Court. However, he sought permission to pay the amount in two installments. The complainant's counsel did not object. The request of the applicant to deposit the amount in two equal installments was accepted, and the matter was listed for today. Today, the learned counsel appearing for the applicant says that the applicant is unable to deposit the amount.

4. The learned APP has strongly opposed the application and pointed out the conduct of the applicant and argued that the applicant is not honouring his word and avoiding complying with the condition while granting bail. On this sole ground, the

application deserves to be dismissed. Besides this, the applicant has the intention to cheat since the day of the inception. The applicant neither supplied the harvesting machine in time nor returned the huge amount of around Rs.24 Lakhs. Sufficient time has passed, and the situation after Covid-19 has been restored. The conduct of the applicant shows that he did not want to do good business, but he intends to cheat the applicant.

5. The applicant has claimed anticipatory bail on the ground that he is innocent and did not enter into an agreement with the complainant. The cheques have been issued to the complainant, and those have been dishonoured. He has advised the complainant to file a complaint under Section 138 of the Negotiable Instruments Act. Where the cheque is more than Rs.5 Lakh, the drawer should provide the details of the cheque to the concerned bank where it was to be presented for clearance. On 10.09.2021, the applicant informed the complainant before presenting the cheque to the bank that he should inform him well 48 hours in advance so he would take the necessary steps. As per the guidelines of the Reserve Bank of India dated 2.1.2022, it was necessary to inform the drawer if the cheque is more than Rs. 5 lack. It has also been contended in the application the complainant presented the cheque for encashment without giving him intimation. The cheque was dishonoured on technical grounds and

not because of insufficient balance. It has also been contended that the case of a civil nature attracts civil liability. He has also advised the complainant that he has the liberty to file a civil suit against the applicant. On these submissions, it has been contended that he has a case for anticipatory bail.

6. If the cheque has been dishonoured on technical grounds due to insufficient balance, if the applicant had *bona fide*, he would have to pay the amount towards the cheque issued to the complainant. The conduct of the complainant, in this case, is material. Instead of showing *bona fides*, he was advising the complainant on what he had to do. The entire contents of the application reveal that the applicant wanted to pull out the matter. Referring to the RBI guidelines before presenting the cheque by drawee is another instance of his conduct.

7. Considering the arguments of the learned APP with the contents of the application, there appears a scope to believe that the applicant intends to cheat the complainant since the inception of the transaction. The conduct of the applicant appears not *bona fide,* and he did not honour the words he had given to the Court while obtaining the interim protection. Besides the above, there are elements of cheating. It appears that the applicant has grabbed a huge amount from the applicant. For all these reasons,

the Court is of the opinion that the applicant has no case for anticipatory bail. Hence, the application stands dismissed.

8. Criminal Application no. 1749/ 2022 is allowed.

(S. G. MEHARE)
JUDGE

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