IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.817 OF 2022
WITH APPLN/2404/2022 IN ABA/817/2022

Mohammad Ariffoddin s/o. Mahammad Naziroddin,
Age 51 years, Occu. Business,
R/o. Ahemadpura Colony, Nizamabad,
Tq. and Dist. Nizamabad
(Telangana State) .. Applicant
(original accused No.1)

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Dharmabad,
Tq. Dharmabad, Dist. Nanded. .. Respondent

Mr. G. G. Kadam, Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for respondent/State;
Mr. U. B. Bilolikar, Advocate for complainant

CORAM : S. G. MEHARE, J.

DATE : 4th October, 2022

P.C.

1. Heard the learned counsel for the Applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.

2. This is one more case where the civil dispute has been given the criminal colour. After hearing the learned counsel for the Applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant, it reveals that the Applicant was doing the grain business under the name and style M/s. Arif Trading Company, at Dharmabad. Undisputedly, the licenses under the Bombay Shops and Establishments Act and other enactments were in his name. It is also

clear from the documents placed on record by the Applicant, which are a hundred in number, that he was controlling the finance and one Mohd. Shafi, the close relative of the Applicant, was doing the actual business. The documents on record reveal that Shafi was instructing the Applicant to pay the money to the traders or allow him to withdraw the money through net banking. The Applicant cannot run away from the fact that he had no concern with the business. His documents reveal that he had complete control over the business. The number of communications through WhatsApp chat also reveals that the Applicant and Shafi had continuous communication pertaining to the business.

3. A large number of payments were made through Mohd. Shafi on the authorization of the applicant, to the traders. The payment was in lacks and crores. It appears from page No. 400 of the compilation that Shafi and the present applicant knew that some amounts were due to the creditors/traders. The learned A.P.P. and the learned counsel for the applicant have arguments about the sender of the message dated 10.05.2021. Both are alleging that they are the receiver of the said message. Ignoring who is the sender and who is the receiver of the said message, the fact remains that the applicant and Shafi both knew that something had to be paid in the market. A strong argument has been advanced by the learned A.P.P. and the learned counsel appearing for the complainant that the present

applicant and Shafi, would clear G.S.T. first and then pay the remaining money to the traders. They also vehemently argued that the applicant had skillfully transferred the amount of more than Rs.88 Lakh from the account of M/s. Arif Trading Company to his personal account. Referring to the transfer entries in the bank account, the learned A.P.P. has vehemently argued that the conduct of the applicant clearly indicates that he had the intention to cheat the traders. They have to recover the said amount. The learned A.P.P. has also strongly relied upon the letter dated 16.10.2021 issued by the Police Inspector, Police Station, Dharmabad, calling upon the applicant for his statement against Shafi. Referring to this letter, the learned A.P.P has vehemently argued that he was creating evidence for his defence. Hence, he did not appear before the police. The contents of the said letter/notice were police wanted to record his statement on his application that sixteen traders had threatened him. The learned counsel for the applicant would argue that after his above application, the applicant learnt that police were helping the traders. Hence had apprehension of his arrest under the garb of his complaint. The apprehension of the applicant appears reasonable. Exactly, the same thing happened, and on the complaint of one of the traders, a report has been lodged against the applicant for the offences punishable under Section 420, 406, read with Section 34 of the Indian Penal Code.

4. The prosecution has no case that the applicant ever not pay a single penny to a single trader. The learned counsel appearing for the complainant also argued that prior to lodging the report, applicant had made the payments to the traders. Hence, it can not be said that the applicant had the intention to cheat the traders since inception. It was Shafi who was dealing with the actual business. He has a hand in gloves with the traders. It has also been argued that in the light of allegations the offence under section 420 is not made out against the applicant.

5. It is not in dispute that the applicant was doing business openly, and he never hid his identity or the business with the traders. He had purchased the grains from various traders and did his business. There is not a single incident against the applicant that he had ever not paid the money to the traders against the goods purchased from them. If the prosecution wanted to prove that the complainant was guilty of cheating, it was necessary to show that the applicant had the fraudulent and dishonest intentions at the time of making the promise to retain the property.

6. The term "cheating" defined under Section 415 of the Indian Penal Code reads thus;

> *"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property,*

or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

7. The Hon'ble Supreme Court in the case of Hira Lal Bhagwati v CBI 2003 SCC (Cri) 1121, has observed in prargraph 34, which reads thus;

> *"34. Section 415 of the Indian Penal Code deals with cheating. To hold a person guilty of cheating as defined under section 415 of the Indian Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of I.P.C. which defines cheating, requires deception of any person (a) inducing that person to: (i) to deliver any property to any person or (ii) to consent that any person shall retain any property, OR (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property…"*

8. The complainant has no case that he has delivered the grains to the firm of the applicant, and he has retained them for his own. The prosecution also has no case or material to show that any time the applicant intentionally induced any of the traders to do business with him. They had free trade. In trading, usually, there used to be rate bargaining. The documents placed on record reveal that the applicant was taking note of the rates of the grains in the market, the hike in

the price of the grains, increase or decrease in G.S.T. or other taxes. That indicates that the applicant was doing his business cautiously.

9. In this set of facts, at this juncture, it is very difficult to accept that the applicant had an intention to deceive the traders. The documents filed on record by the applicant show that he has to recover from the other traders more than Rs.4 Crore. Since his dues could not be recovered in time, he could not pay the balance to the traders; this can not mean that he had the intention to cheat the traders. The business may collapse if the dues are not recovered in time.

10. It has been vehemently argued by the learned counsel for the applicant that Shafi, who was dealing with every trader, has been protected under the umbrella of the police. As per the statement of Arif the amount due is not more than Rs.43 Lakh. However, the complainant is trying to recover the dues by giving a shade of criminal case to the Civil dispute, for which the legal remedy is available. Shafi is in town, but the police never took pains to arrest him. Till this time, he did not approach any Court for anticipatory bail. He has rightly argued that Government dues are preferred to the dues of private parties. The applicant has an apprehension that the bank account of M/s. Arif Trading Company may be attached, and the huge amount of G.S.T. remained to be paid. The applicant experienced that Shafi was

not with him. Hence, he transferred the amount from the account of Arif Trading Company to his personal account.

11. The record reveals that whatsoever amount the applicant got transferred from M/s. Arif Trading Company to his personal account has been paid to clear G.S.T. So it cannot be said that he has utilized the said money for his own. On the contrary, that shows his *bona fides*. The communication between the applicant and Shafi that the applicant wanted to clear G.S.T. first and then pay the balance due to the traders clearly indicates the intention of the applicant was to clear dues.

12. After going through the hundreds of pages filed by the applicant and the learned A.P.P., it indicates that the applicant was doing the trading and the complainant was also doing business with the applicant. However, some mess happened due to Shafi who was working for the applicant and the amount remained to be paid. The documents placed on record by both sides do not indicate the intention to cheat. The complainant has also issued a notice through Advocate to recover the amount due. It was purely trading. The Civil law has taken care of any amount due arising out of contract. The civil remedy to recover the amount is available, but it appears that all the traders, nowadays, have adopted the easiest mode to recover the dues with the help of the police. The law is clear that the Investigating Officer has no power to recover the money or property

in every crime. But it is experienced that the investigation officer opposes the bail applications on the ground that the money involved in the crime other than the offences, in which the recovery of money is permissible under the law, is to be recovered. Be that as it may, the dispute between the traders and the applicant appears purely a civil dispute. From the record, it does not appear that the applicant ever intended to cheat the traders. The applicant has roots in Nizambad. He is seen as financially sound. Hence, there appears to be no chance of his absconding. Therefore, the Court is of the view that this is not a fit case for custodial interrogation. Hence, the following order :-

i) The application is allowed.

ii) The interim protection granted to the applicant by order dated 12.07.2022 is confirmed on the same terms and conditions of bail bonds, with additional conditions to attend the police station on 10th, 11th, 12th and 13th October 2022, between 11.00 a.m. and 2.00 p.m. and thereafter, as and when called by the police on written notice.

iii) For the reasons stated in the application, Criminal Application No. 2404 of 2022 is allowed.

(S. G. MEHARE, J.)

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