

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 ANTICIPATORY BAIL APPLICATION NO.1110 OF 2022

BABASAHEB MACHHINDRA GOSAVI
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO.3114 OF 2022
IN ABA/1110/2022

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Advocate for Applicant : Mr. Karpe Rahul R.
APP for Respondent-State : Mr. K. S. Patil.
Adv. for Complainant to assist APP : Ms. Suvarna M. Zaware.

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CORAM : S. G. MEHARE, J.
DATE : 20.09.2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP for the respondent-State and learned counsel for Complainant to assist the learned APP.

2. It has been alleged against the applicant that he told the Complainant and others that he had a scheme for the steel at a cheaper rate. He told the Complainant that if he wanted steel and cement for the construction of the house, he would have to pay only 60% of the price. When the Complainant agreed, the present applicant demanded him money in advance. Not only

this, the friend of the Complainant also paid the money to the present applicant. The applicant introduced one dealer Shivanand Dadu Kumbhar, R/o Ichalkaranji, District Kolhapur. He also told him that the amount was to be transferred to his account. He gave the account number of one Sanmati Kumar and one Sandip Ashok Yadav. The Complainant sent Rs.1,54,000/- each to the accounts of these two persons. The Complainant paid Rs.5,16,000/- to the present applicant, and his friend has also paid Rs.6,79,000/-. After depositing the money, the applicant asked the present applicant, “when will he get the cement and steel”. He made the dry promises that the truck would come in a few days. Lastly, he said that Shivanand Kumbhar fled away. Therefore, the Complainant asked him to return the money which was paid to him. But, the applicant denied it.

3. Learned counsel for the applicant has vehemently argued that considering the allegations levelled against the applicant, it is barely a promise. A promise is different from an investment. The applicant has also deposited an amount of Rs.3,24,000/- with Shivanand Kumbhar. He has also suffered a huge loss. The applicant is not the beneficiary out of the money paid to Shivanand Kumbhar. One Sharad Giri planted the

complaint against him since he had also invested the money in the said scheme. He has vehemently argued that since the money has not been transferred to the account of the applicant and he did not receive a single penny. Hence the custodial interrogation of the applicant is not essential.

4. Learned APP has vehemently argued that the applicant introduced himself as an agent for the scheme launched by Shivanand Kumbhar. He was marketing for him and making promises to get the steel and cement at only 60% of the market price. Since inception, the applicant intended to cheat; therefore, he did not give his bank account number. He has received cash from the Complainant. He also lodged the FIR alleging against Shivanand Kumbhar that he had siphoned his money. However, in the investigation, it is transpired that the applicant has direct connection with Shivanand Kumbhar and in conspiracy, a fraud has been played.

5. Learned counsel for the Complainant argued that the main accused, Shivanand, had been arrested in Belgaon. He has cheated the public for worth Rupees Five Crores under the promise to supply steel and cement at a lower price. The applicant introduced the scheme to the Complainant, and on his promise to get the steel and cement at a cheaper rate, he

collected the money from the Complainant and many others. He was well aware that Shivanand Kumbhar had not been in business as such, but with the intent to cheat, he did not disclose the truth. The Complainant and many others have invested the amount on his promise. The amount was paid to him in cash. The offence is serious. Hence, his application may be rejected.

6. Perused the FIR and papers produced by the prosecution. A specific allegation has been levelled against the applicant that he introduced a scheme of getting steel and cement at a cheaper rate. He has specifically told the Complainant that he would have to pay only 60% of the market price. On his say, the Complainant has deposited the amount in the account of Sanmati Kumar and Sandip Ashok Yadav. The allegations have been levelled against him that the applicant has also received a cash amount. Learned counsel for the applicant places on record a newspaper cutting showing that this Shivanand Kumbhar has cheated the public for worth Rupees Five Crores under the false promise to provide steel and cement at a cheaper rate.

7. Considering the papers and facts of the case, *prima facie*, there is material against the applicant showing a connection

with Shivanand Kumbhar. Many persons have been cheated under the promise to get the cement and steel at a cheaper rate. The offence is apparently grave and serious. Therefore, the application has no case for anticipatory bail.

8. Hence, the application stands dismissed.

9. Criminal Application No.3114 of 2022 is allowed.

(S. G. MEHARE, J.)

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vmk/-