IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1097 OF 2022
WITH APPLN/3027/2022 IN ABA/1097/2022

YOGESH MADANLAL MUNDADA
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Kedar Sunil Warad
APP for Respondent/State : Mr. K. S. Patil
Advocate for Complainant : Mr. Shaikh Sohail Subhedar holding for Mr. Nilesh S. Ghanekar
...

CORAM : S. G. MEHARE, J.

DATE : 29-09-2022

PER COURT :-

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. It has been alleged against the applicant that he has taken Rs.18 Lakhs from the complainant to organize the event abroad. However, instead of organizing the said event, the applicant misappropriated the amount paid by the complainant. The complainant has a serious objection that since inception, the applicant had the intention to cheat him.

3. The learned counsel for the applicant has vehemently

argued that the applicant has created the forged document. That was notarized, not bearing the signature of the complainant. However, he admitted that one memorandum of understanding (MOU) was executed between the complainant and the applicant on 16.03.2022, wherein the applicant assured the complainant to repay him the money as it was a hand loan. It is also not in dispute that the cheques issued by the applicant have been dishonoured.

4. The applicant's counsel has vehemently argued that the event, which was to be organized abroad, could not be organized for some reason. However, before the event, the applicant, who had invested the money, turned from his word and asked to withdraw from the said event. Till that time, the applicant had invested a huge amount with many other businessmen. The plea of the applicant is that he never intended to cheat the complainant. The applicant and the complainant have the same business of event management. However, due to the sudden u-turn of the complainant, he could not repay the money as he had already invested and yet not received back from those businessmen. Therefore, to assure the complainant, he executed MOU as stated above and again ensured to pay the money invested by him. However, he could not recover the money from those to whom he had paid the amount. It has been specifically argued by the learned counsel for the applicant that the situation was beyond the control of the applicant and, suddenly, the

event failed, and now the amount invested by the applicant remained unrecovered. In view of the above events, it can not be said that the applicant intended to cheat the complainant from inception. On the contrary, they had business relations for a long as they had similar business. The complainant is insisting hard for the applicant to repay his amount, which was beyond his control. Still, the applicant did not deny to repay the money, but it is subject to recovery from those to whom the amount has been paid to organize the said event. It is also argued that for the first time, he learnt about the notarized document. The complainant did not sign it; hence, it cannot be said that it is a forged document.

5. The learned A.P.P. has opposed the application contending that *prima facie* the offence is serious. The applicant had deposited the amount of his mother with the hope of having something in return, but the applicant put him at a loss. The complainant never invested money in the event, as stated above. The dishonour of cheques is the best evidence of intention to cheat, and he had the intention to cheat from inception. The money is said to be invested; there is no concrete evidence. The offence is serious. The applicant has siphoned huge amounts of money. The complainant has suffered a great financial setback. Hence, he is not entitled to anticipatory bail.

6. The learned counsel for the complainant has strongly opposed the application. He would argue that it was hard-earned money of the complainant’s mother. The applicant has breached the promise on many occasions. He had created false documents. He cannot be believed. He was aware that he was not able to pay money, and even then, he issued the cheques, which he knew that cheques would not be honoured. The conduct of the applicant is sufficient to infer his intention to cheat. Hence, the application may be rejected.

7. The facts discussed above reveal that the applicant and the complainant had business relations. An event was organized abroad, but it could not be organized. The conduct of the applicant demonstrates that he never denied repaying the money, but the situation was beyond his control. However, nowadays, in society, a practice is seen developed to approach the Police for disputes which are prima facie civil. The disputes out of violation of contracts are also taken to the Police; the Police also happily register the crime and chase the accused only for recovery of the amount. Such cases are mushrooming. If the Police do not take cognizance, the public immediately approaches the Court for directions under section 156(3) of Cr.P.C., in genuine cases may be considered, but in each case, it may not be reasonable. Be that as may, the M.O.U. was binding upon both parties. That was the best evidence to file a civil suit for recovery of the amount if the party

desires. Further facts demonstrate that the applicant had invested the money in the event abroad and decided not to invest and go with that event. The document placed on record by the applicant reveals that till that time, the applicant had invested the money for the event. His *bona fides* can be seen in executing the M.O.U. and assuring the complainant to repay the amount. No one should be punished for a situation beyond his control. Considering the entire facts, the applicant has a good case for bail. Hence, the following order:-

i) The application is allowed.

ii) The *interim* protection granted to the applicant by the order dated 12.08.2022 is confirmed on the same terms and conditions.

iii) For the reasons stated in the application, Criminal Application No.3027 of 2022 is allowed.

(S. G. MEHARE)
JUDGE

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