

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1478 OF 2021

Juberali Younusali Sayyad

Applicant

Versus

The State of Maharashtra

Respondent

Mr. C.C. Deshpande, Advocate for the applicant.

Mr. V.S. Badakh, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 24th JANUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 570/2021 registered with Nandurbar City Police Station, Tq. And Dist. Nandurbar, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. Allegations against the applicant are that applicant had promised the informant that he would provide cement and iron at a subsidised rate. Initially, informant had paid Rs. 1,00,000/-. Applicant provided him cement and iron to the extent of Rs.80,000/-.

Thereafter, on 4th January, 2021, informant transferred Rs.70,000/- in the bank account of the applicant from the bank account of informant's brother by the name of Vinod More. However, applicant did not provide iron and cement to the informant. On 25th April, 2021, informant contacted the applicant on phone but his cell phone was switched off. Applicant had promised to return the amount to the informant but he failed to repay. Therefore, informant filed First Information Report on 25th June, 2021. On the basis of this First Information Report, offence as aforesaid came to be registered against the applicant.

3. I have heard Shri Deshpande, learned counsel for the applicant and Shri Badakh, learned APP for the State.

4. Learned counsel Shri Deshpande submits that the contents of First Information Report themselves show that the applicant initially had provided iron and cement to the informant. Subsequent order was placed on 4th March, 2021 and from 21st March, 2021, lockdown was imposed, on account of which, the entire World had come to standstill. He submits that again total lockdown was imposed. Thereafter, partial lockdown was imposed. Therefore,

applicant was not in a position to provide the material to the informant. He submits that the applicant is ready to deposit Rs.50,000/- towards the amount which he had received from the informant.

5. Learned APP Shri Badakh does not dispute that the lockdown was imposed from the said date. He submits that after June 2021, partial lockdown was imposed. He also does not dispute that because of partial lockdown, business transactions were at the lowest. He submits that, in that case, applicant should have refunded the entire amount. He submits that the conduct of the applicant, clearly suggests that he had no intention to provide iron and cement nor had any intention to refund the amount.

6. From the tenor of the First Information Report, it is clear that the applicant initially had supplied the material which he had promised and the order was satisfied. Therefore, it is clear that he had no intention to deceive the informant. Second order was placed on 4th March, 2021, but because of lockdown imposed in the month of March 2021, transactions were not happening. In these circumstances, it cannot be said that the applicant had the intention

to deceive the informant.

7. Learned APP further submits that the applicant deceived many people and he had collected an amount of Rs.44,00,000/- from those people. It is true that Investigating Officer has recorded statements of those persons. However, all these transactions took place after the start of pandemic situation created by Covid-19. Therefore, it cannot be said that the applicant had the intention to deceive the informant and others right from the inception of the transactions.

8. Learned counsel Shri Deshpande submits that applicant does not have any criminal antecedent. After registration of this First Information Report, another First Information Report is registered against him. He further submits that applicant is ready to deposit the entire amount of Rs. 90,000/- involved in this First Information Report. On the request of learned counsel Shri Deshpande, time of a week is granted to deposit the amount of Rs. 90,000/-.

9. Having regard to the discussion made above, I am inclined to release the applicant on bail. Hence the order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.50,000/- (Rs. Fifty Thousand) with one solvent surety in the like amount in connection with Crime No. 570/2021 registered with Nandurbar City Police Station, Tq. And Dist. Nandurbar, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, on condition that he shall deposit amount of Rs. 90,000/- in this Court or in the concerned trial Court and that he shall not pressurise the witnesses and shall not tamper the prosecution evidence.
- iii) Time of one month is granted to deposit amount of Rs. 90,000/-.
- iv) Application stands disposed of.
- v) It is clarified that observations made in this order are restricted to the decision of the this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge