

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1500 OF 2022

Tajim Ali Son Of Majnu Ali And Anr	...Applicant
Versus	
State Of Maharashtra	...Respondent

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Mr. Rizwan Merchant i/by Mr. N P Bhavsar, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 10th OCTOBER, 2022

PER COURT:

1. This is an application for anticipatory bail in connection with C.R. No. 17 of 2022 registered with Pandharpur Taluka Police Station for offences punishable under Sections 406, 420 read with 34 of the Indian Penal Code. The FIR was registered on 08.01.2022.

2. The case of the prosecution is that the complainant is involved in sale/purchase of fruits. He purchases the fruits from farmers and sell them to others at various places. He earns commission. The complainant got acquainted with applicant No.2 in the year 2020. The complainant was informed by Nazim Ali that complainant should buy fruits

and send it to him. Nazim also told the complainant that his brother Tajim Ali and brother-in-law Meheebub Mallick is also in the said business. The complainant began transactions with Nazim and Tajin from January 2020. The complainant purchased fruits from farmers and sent them to the accused. The dues towards sale of fruits for a period of 01.01.2020 to 31.05.2020 was worth Rs.5,01,76,000/-. The complainant received payment of Rs.3,39,91,300/-. The balance to be paid was Rs.1,61,77,743/- since the payment was not made, the complainant visited West Bengal. At that time the applicants expressed difficulty in clearing the payment on account of lockdown and loss of business. The complainant thereafter, sent fruits on 12.02.2021 worth Rs.1,88,90,058/-. The payment received was of Rs.1,41,43,200/- and the balance amount of Rs.47,46,858/- was pending. The total arrears to be received by complainant was Rs.2,09,24,601/- since the amount was not received, FIR was registered and the investigation proceeded.

3. The applicant had preferred an application for anticipatory bail before the Sessions Court which has been rejected.

4. Learned advocate for the applicants submitted that the case relates to the accounts and custodial interrogation of the applicants is not necessary. Huge amount is already parted to the complainant. Dues claimed by the complainant are disputed. Relying upon the statement prepared by applicants, it is submitted that substantial amount has been paid to the complainant. The applicants are willing to sit across with the complainant to settle the dispute. To show bonafides applicants are willing to deposit Rs. 25 lakhs in the court if it is decided to settle the matter with aid of any third party. The complainant has suppressed the fact that the transactions were executed since 2019 and has stated deliberately that the complainant got acquainted with the accused in the year 2020. The dispute purely relates to calculation of the dues of the parties. The applicants are willing to co-operate with the investigation.

5. Learned APP submitted that the investigation is in progress. Custodial interrogation of the applicants is necessary. Statements of various farmers, who had sold the fruits to complainant are recorded and the said statements are in conformity with the claim of the complainant. The fruits were delivered to applicants. There is defalcation of

the huge amount. There is no co-operation from the applicants. When the police team had visited the residence of applicant, they evaded arrest. They were not found inspite of several attempts. The telephonic recorded conversation between accused and the complainant reflects admission by accused about dues of complainant. Custodial interrogation is necessary.

6. Learned advocate for the respondent No.2/complainant reiterated the submissions of learned APP. It is submitted that dues are of Rs.2,09,24,601/-.The applicants should deposit and secure the amount of atleast two crores. The applicants have evaded the clearance of dues towards sale of fruits. Farmers from whom the complainant had collected fruits are after him for the payment. The recovery is huge.

7. The investigation papers indicate that the notices were issued to the accused under Section 41-A. The say of the police dated 14.07.2022 indicate that on 07.02.2022 the police went to West Bengal. The accused Nos. 1 and 3 were present in the house with the help of women they managed to flee away. The police again went to the

residence of accused on 22.04.2022. The door was not opened by the inmates of the house immediately. Police were made to wait. After the door was opened, the accused were not found in the house. The attempt was made to trace the accused on 23.04.2022 but the accused were not found. Prosecution is relying upon the recorded conversation in respect to the call between accused and the complainant and contended that the accused has admitted the liability. Investigation papers also include the statement of various persons, who had sold the fruits. It is pertinent to note that when dues were demanded by complainant, it was never claimed that the amount has been paid by them. The defence of payment has been urged in the application for anticipatory bail. The applicant No.1 and 2, who are brothers has played vital role in transactions and apparently trying to mislead complainant and investigation agency. No protection can be granted to the applicant No.1 and 2. However, considering the nature of role attributed to the applicant No.3, he need not be subjected to custody.

ORDER

- (i) The application of Applicant No.1 Mr. Tajim Ali and Applicant No.2 Mr. Nazim Ali is rejected.
- (ii) The application of Applicant No.3 Meheub

Shishu Mallik is allowed;

(iii) In the event of arrest of applicant No.3 in connection with C.R. No.17 of 2022 registered with Pandharpur Taluka Police Station the applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iv) The applicant shall attend the investigating officer on 17th, 18th and 19th October, 2022 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till filing of the charge-sheet.

(v) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)