IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Harish Chand Jain and Ors. … Applicants
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1056 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Satish Vasant Ghatge … Intervener
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1959 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Brendon James Sissing … Applicant
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1712 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Madan Gopal Bharadwaj … Applicant
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1439 OF 2022
IN

ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Brendon James Sissing	…	Applicant
and		
Harish Chand Jain and Ors.	..	Applicants
versus		
State of Maharashtra	…	Respondent

WITH
INTERIM APPLICATION NO.3347 OF 2022
IN
INTERIM APPLICATION NO.1056 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.752 OF 2022

Satish Vasant Ghatge	…	Applicant
and		
Harish Chand Jain and Ors.	…	Applicants
versus		
State of Maharashtra	…	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Harish Chand Jain and Ors.	…	Applicants
versus		
State of Maharashtra	…	Respondent

WITH
INTERIM APPLICATION NO.1055 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Satish Vasant Ghatge	…	Intervener
and		
Harish Chand Jain and Ors.	..	Applicants
versus		
State of Maharashtra	…	Respondent

WITH
INTERIM APPLICATION NO.1958 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Brendon James Sissing ... Applicant
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1713 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Madan Gopal Bharadwaj ... Applicant
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1438 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Brendon James Sissing ... Applicant
and
Harish Chand Jain and Ors. .. Applicants
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3346 OF 2022
IN
INTERIM APPLICATION NO.1055 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.753 OF 2022

Satish Vasant Ghatge ... Applicant
and
Harish Chand Jain and Ors. ... Applicants
versus
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1460 OF 2022

Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1729 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1460 OF 2022

Satish Vasant Ghatge ... Applicant
and
Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1727 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1460 OF 2022

Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1461 OF 2022

Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1693 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1461 OF 2022

Satish Vasant Ghatge ... Applicant
and
Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.1728 OF 2022
IN

ANTICIPATORY BAIL APPLICATION NO.1461 OF 2022

Manish Dinesh Thakore ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Nidhesh Gupta, Senior Advocate with Mr. Anshuman Sinha, Mr. Vijay Pande, Mr. Vijay Prakash, Ms. Pragya Sharma, Ms. Hasnain Kazi, Mr. Shekhar Jagtap, Ms. Shraddha Vavhal, Mr.Hafiz Kazi, Ms. Rhea Francis, Ms. Zeeshan Khan, for Applicants in ABA Nos.752 of 2022, 1460 of 2022 and 1461 of 2022
Mr. Ravi Kadam, Senior Advocate with Mr. Vaibhav Bhure, Mr. Mr. Anshuman Sinha, Mr. Vijay Pande, Mr. Vijay Prakash, Ms. Pragya Sharma, Ms. Hasnain Kazi, Mr. Shekhar Jagtap, Ms. Shraddha Vavhal, Mr.Hafiz Kazi, Ms. Rhea Francis, Ms. Zeeshan Khan, for Applicants in ABA 753 of 2022.
Mr. A.H.Ponda, Senior Advocate i/by Mr. Sachin Pawar, for Applicant in IA 1056 of 2022 in ABA 752 of 2022.
Mr. Subhash Jha i/by Mr. Sachin Pawar for Applicant in IA 1055 of 2022 in ABA 753 of 2022.
Ms. P.N.Dabholkar, APP, for State.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 4th JULY, 2022
PRONOUNCED ON : 17th OCTOBER, 2022

P.C.

1. These Applications are preferred under Section 438 of Code of Criminal Procedure, 1973 ('the Code') for pre-arrest bail in connection with C.R.No.164 of 2022 and 165 of 2022 registered with Shahapuri Police Station, Kolhapur, for the offences punishable under Sections 465, 467, 468, 471, 409, 420 and 511 read with 34 of Indian Penal Code, 1860.

2. The background facts which culminated in the registration of the

abovenumbered CRs, at the instance of Mr. Satish V. Ghatge, first informant/Applicant in Intervention Application Nos.1056, 1055, 1729 and 1693 of 2022 can be stated in brief as under :

2.1 Though both the CRs proceed on an identical premise, in C.R.No.164 of 2022 the allegations are two pronged. It may, therefore, be expedient to first note the allegations in C.R.No.164 of 2022.

2.2 Ghatge Group based at Kolhapur, operates a number of companies, primarily dealing in the business of automobile dealership and transportation. In 1972 a Company, namely, Kirloskar Ghatge Patil Auto Limited was formed. It was later on rechristened as KGP Auto Limited.

2.3 In the year 2011, Daimler India Commercial Vehicles Pvt. Ltd., (DICV) appointed KGP Auto Limited as its dealer for Pune Region comprising of 17 districts vide letter of intent dated 2nd August, 2011. Under the terms of the letter of intent, KGP Auto Limited used to sell Bharat Benz trucks and buses and also provide after sales service. For the said business, KGP Auto Ltd. required two types of financial assistance. One, loan to purchase demo truck and bus. Second, financial assistance in the nature of spare parts, inventory funding, real estate funding, working capital funding and equipment funding, etc.

2.4 To meet the financial requirements, DICV made KGP Auto Ltd. to avail loan from Daimler Financial Services India Pvt. Ltd. (DFSI). The latter had provided financial assistance to purchase two Bharat Benz demo truck and one bus. KGP Aut Limited duly repaid the said loan under the respective loan agreements during the period 2013 to 2017. While providing aforesaid financial assistance, DFSI had made KGP Auto Ltd. to part with 15 signed cheques towards security and/or EMI. However, after repayment of the loan availed for purchase of three demo vehciles, DFSI, though obligated, did not return those cheques despite repeated request, nor the copies of the loan agreements were furnished to KGP Auto Ltd.

2.5 The first informant alleges, despite repayment of the entire loan for the purchase of three demo vehicles during the period 2015-19, DFSI presented those 15 cheques, delivered by way of security, for encashment on 15th November, 2021 with a view to have wrongful gain. Dates were put on the undated signed cheques without consent and knowledge of the drawer and thereby forgery was committed.

2.6 Eventually, those cheques aggregating to a sum of Rs.93,51,631/- were honoured upon presentment on 19th November, 2021. Thus, the Applicants – Harish Chand Jain (Accused No.1), Mr. Ingo Krueger (Accused No.2), Ms. Latha Venkatesh (Accused No.3), Mr. Brendon James Sissing (Accused No.4), directors of DFSI and Mr. Madan Gopal Bharadwaj (Accused No.6) the head of Credit Division of DFSI, in pursuance of a criminal conspiracy, committed offences of cheating, forgery and criminal breach of trust by misusing the custody of the signed cheques delivered by way of security and/or installments, despite the loan having been duly discharged.

2.7 The first informant further alleges that in respect of the second component of financial assistance like vehicle, spare parts, inventory, real estate and working capital funding, the terms of the loan were stipulated by and between DFSI and the first informant's company by executing Terms Sheets and Agreements. After the repayment of the previous loan, fresh terms sheets and agreements were executed. While executing the terms sheets and agreements afresh, DFSI made the first informant's Company to deliver 6-8 signed blank cheques by way of security. Once the said transaction was concluded and fresh terms sheets and agreements were executed, DFSI was enjoined to return the old cheques delivered by way of security. However, DFSI did not return those cheques despite repeated demands.

2.8 Under one of such transactions, while availing loan of Rs.38 Crores, DFSI had made the first informant's company to deliver eight blank signed cheques bearing Nos.434076 to 434083, drawn on ICICI Bank Ltd. However, after the conclusion of the said transaction and repayment of the loan availed thereunder, DFSI did not return the abovenumbered cheques. On 7th December, 2021, the first informant's Company received a demand notice under Section 138 of the Negotiable Instruments Act, 1881. Thereupon, it transpired that DFSI misused the custody of signed blank cheques bearing Nos.434076 to 434083 delivered by way of security as back as in the year 2014 and presented those cheques for encashment by dishonestly filling in the amount of Rs.6,42,00,538 in cheque No.434076 and the amount of

Rs.6,42,00534 in rest of the 7 cheques and the date on which the cheques became payable as 15th November, 2021 without consent or knowledge of the first informant's Company. Those cheques were dishonoured on presentment on 19th November, 2021.

2.9 The first informant thus realized that the Applicants/accused misused the custody of the signed blank cheques delivered by way of security as back as 2014 and by committing forgery presented those cheques for encashment. The first informant alleges the said exercise was actuated with malice. Hence, report against the Applicants/accused.

2.10 In C.R.No.165 of 2022, the first informant alleges that in the year 2015, DICV represented to Ghatge Group to sell cars manufactured by Mercedes Benz India Pvt. Ltd. (MBIIL). DICV, DFSI and MBIL are inter-related companies. Since KGP Auto Ltd. was already in the business relationship with Daimler Group for sell of trucks and buses, the first informant's company was appointed a dealer to sell cars of MBIL. A dealership agreement came to be executed on 26th February, 2016. The first informant's company, thus, availed loan from DFSI to purchase four demo cars. Towards security the first informant's company – KGP Auto Ltd., was made to deliver four signed blank cheques bearing Nos.097258, 100236, 100274 and 100229. The first informant's company duly repaid the entire loan amount availed for purchasing four demo cars.

2.11 After repayment of the entire loan amount availed for purchasing four demo cars, DFSI was under an obligation to return those four cheques. The first informant alleges despite repeated demands, Mr. Madan G. Bharadwaj, Head of the Credit Division of DFSI – Accused No.6, neither returned those cheques nor delivered copies of the agreements evidencing the transactions even after the transactions were concluded. To the shock and surprise of the first informant on 9th December, 2021, the first informant received notice under Section 138 of the Negotiable Instruments Act, 1881, demanding payment of the amount covered by the above numbered cheques. The first informant realized that the Applicants, in pursuance of a criminal conspiracy, misused the custody of the abovenumbered signed blank cheques and filled in the amount of Rs.1,29,00,000/- in cheque No.097258, Rs.81,54,000/- in cheque No.100236, Rs.68,48,000/- in cheque No.100274 and Rs.50,00,000/- in cheque No.100229. The date '15/11/2021' was also put on all the cheques fraudulently. Those cheques were dishonoured on 19th November, 2021.

2.12 Thus by committing forgery the Applicants presented the abovenumbered cheques for encashment despite underlying transactions for the security of which those cheques were delivered, having been concluded by repayment of the loan amount. Thus the report.

3. Initially the Applicants approached the learned Sessions Judge, Kolhapur. By an order dated 17th March, 2022, the learned Additional Sessions Judge was persuaded to reject the Applications for pre-arrest bail. Hence, the Applicants

have approached this Court.

4. The Applicants assert that the first informant has lodged reports with a view to wreak vengeance as the proceedings were initiated against the first informant's companies and the first informant for recovery of the huge amount which they owe to the Daimler group. The first informant has made an endeavour to give colour of criminal prosecution to an otherwise purely civil dispute. According to the Applicants, it was KGP Auto Ltd. and Ghatge Motor Pvt. Ltd. (GMPL) (informant's companies) who committed breach of trust in selling the vehicles in breach of the agreements between the parties (Sale out of Trust – SOT). Under the terms of the agreements, the informant's companies were enjoined to credit the sale price of the vehicles with DFSI within four working days from the date of sale of vehicle, for which finance was provided by DFSI. It was expressly agreed between the parties that failure to pay the price to DFSI would result in SOT and the consequences set out in the wholesale agreement would ensue. In fact, the informant's companies admitted that they had resorted to SOT.

5. Upon the request of the informant's Companies, DFSI entered into a Forbearance Agreement on 27th September, 2019. Forbearance Agreement was amended on 30th December, 2019 to extend the forbearance period till March 2020. KGP Auto Limited and GMPL continued to commit default in payment of the outstanding amount despite repeated assurances. Thus, loan recall notices were

addressed on 24th August, 2021 and a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2015 (IBC, 2015) was lodged on 20th October, 2021 before the National Company Law Tribunal to initiate the corporate insolvency resolution process against KGP Auto Limited and Ghatge Motors. Under the terms of the contract, DFSI was entitled to enforce the security in case of cross default. Therefore, according to the Applicants, no case of cheating or forgery is made out.

6. Applicants have also individually claimed that they were not in-charge of and responsible to the affairs of the company when the offences were allegedly committed. Therefore, they cannot be arraigned for the alleged offences.

7. Affidavits in Reply are filed on behalf of the prosecution resisting the Applications. The prosecution has also placed on record documents to bolster up its case. To the Intervention Applications also, the first informant has annexed a number of documents which bear upon the controversy.

8. I have heard Mr. Nidhesh Gupta, Senior Advocate appearing for the Applicants in ABA Nos.752 of 2022, 1461 of 2022 and 1460 of 2022, Mr. Ravi Kadam, Senior Advocate appearing for the Applicants in ABA No.753 of 2022, Ms. Dabholkar, APP, for State, Mr. A.H.Ponda, Senior Advocate for Applicant/Intervener in IA No.1056 of 2022 in ABA 752 of 2022 and Mr. Subhash Jha, for Applicant/Intervener in IA No.1055 of 2022 in ABA No.753 of 2022. With the assistance of the learned Counsel for the parties, I have perused the allegations in the FIR, documents placed

on record by the prosecution, first informant and the Applicants. I have also perused the investigation papers tendered by the learned APP.

9. Mr. Gupta, learned Senior Advocate for the Applicants strenuously submitted that the FIR is conspicuously silent about the execution of the Forbearance Agreement dated 27th September, 2019 consequent to the misdemeanor on the part of the first informant's company in selling vehicles SOT. Taking the Court through the terms of the Forbearance Agreement and the Wholesale Loan Master Agreement executed between the parties, Mr. Gupta would urge that DFSI had a right to appropriate the payment which were already made. The agreements collectively provided for enforcement of 'collaterals' and liability for 'cross default'. Mr. Gupta would further urge that no allegations are attributed to the Applicants. In any event, there can be no vicarious liability for the act of the Company, DFSI.

10. Mr. Gupta further submitted that the very premise that the Applicants abused the custody of the signed blank cheques is flawed. By a catena of decisions, the defence of misuse of the custody of the signed blank cheques has been negatived by the Courts and such endeavour on the part of the drawers of the cheques to preempt the prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 has been repelled. To bolster up this submission, Mr. Gupta placed reliance on the judgments of the Supreme Court in the cases of **Sunil Kumar**

V/s. Escorts Yamaha Motors Ltd. and Ors.[1], **Sharon Michael and Ors. V/s. State of Tamil Nadu and Anr.**[2], **Bir Singh V/s. Mukesh Kumar**[3] and **Satishchandra Ratanlal Shah V/s. State of Gujarat and Anr.**[4]. By way of demurer, Mr. Gupta would urge that there is no material to indicate that at the inception of the transaction, the intention of the accused, or for that matter Daimler group of companies, was dishonest. Thus, no offence under Section 420 of Indian Penal Code, 1860 can be said to have been made out. At best, it would be a case of breach of contract, which is quite distinct from an offence of cheating. To lend support to this submission, Mr. Gupta placed reliance on the judgment of the Supreme Court in the case of **Hridaya Ranjan Prasad Verma and Ors. V/s. State of Bihar and Anr.**[5]

11. Mr. Kadam, learned Senior Advocate for the Applicants in ABA 753 of 2022, would submit that the allegations in the FIR, at best, would constitute a defence in a prosecution under Section 138 of the Act for the dishonour of the subject cheques. The first informant alleges in the FIR at multiple places that the cheques were delivered by way of security. Whether the accused company could have presented the cheques for encashment in the backdrop of the undisputed delivery of the cheques is essentially a matter of interpretation of contract. Lying emphasis on Clause 2.15 of the Forbearance Agreement, Mr. Kadam would urge that the latter contract revised all

1 (1999) 8 SCC 468
2 (2009) 3 SCC 375
3 (2019) 4 SCC 197
4 (2019) 9 SCC 148
5

obligations incurred by the informant's companies and the first informant under the previous contracts. The provision of 'cross default' under Clause 29 of Wholesale Master Loan Agreement, according to Mr. Kadam, authorizes the lender to appropriate any payment made by the borrower under the said agreement towards payment due from the borrower and/or guarantor and/or company etc., and such appropriation binds the borrower.

12. Mr. Kadam placed reliance on a judgment of the Supreme Court in the case of **Mahindra and Mahindra Financial Services Ltd. and anr. V/s. Rajiv Dubey**[6], wherein the Supreme Court had quashed a prosecution in somewhat similar situation, where the Respondent-first informant therein, had alleged criminal breach of trust by misusing the custody of the cheques delivered to the Appellants therein.

13. As against this, Ms. Dabholkar, learned APP for the State would submit that the Applicants are not only guilty of committing forgery of the subject cheques but also the Wholesale Master Loan Agreement purportedly executed in the month of October, 2019. Since the said agreement is void, the Applicants cannot rely upon any of the terms of the said Agreement to wriggle out of the situation. Taking the Court through the statements of witnesses recorded during the course of investigation, namely Gaurav Mohan Ghatge and Mr. Amol Arvind Pudke, Ms. Dabholkar would urge that the accused Company made the directors of KPG Auto Ltd. and GMPL to

6 (2009) 1 SCC 706

put signatures on the agreements and never delivered copy of those agreements to the informant's companies despite demands.

14. Mr. Ponda, learned Senior Advocate appearing for the Applicant-first informant in IA No.1056 of 2022 in ABA 752 of 2022, urged that the case of the Applicants that they were entitled to make use of the cheques which were admittedly delivered in the past, under the terms of the contract between the parties, being Wholesale Master Loan Agreement, or for that matter the Forbearance Agreement, is belied by the assertion in the demand notice addressed by DFSI upon dishonour of the cheques. In the demand notice dated 3rd December, 2021, there is a categorical assertion that the cheques were issued by the KGP Auto Ltd., in the month of November, 2021. This claim runs counter to the submissions now sought to be canvassed that the drawee had the authority to fill in the particulars of the cheques and present the same for encashment. The Applicants cannot be permitted to approbate and reprobate, urged Mr. Ponda.

15. Mr. Ponda took the Court through the term sheet dated 26th June, 2014, especially the condition (pages 555-556 of the Affidavit in Reply filed by Mr. S.T.Ingavale, API) to the effect that the borrower shall provide six signed undated cheques. The delivery of the cheques in the year 2014, therefore, can hardly be disputed. Since those cheques were delivered in the year 2014, reliance on Whole Sale Master Loan Agreement which authorized DFSI to resort to Collateral, is of no

avail as the collateral meant the present and future property and rights of the borrower and not the cheques which were delivered in the year 2014. Mr. Ponda would also urge that the recourse to cross default clause 22.12, is also of no assistance to the Applicants as the mechanism for the same is provided under Clause 29 for enforcement of payments under the said agreement and not for past transactions.

16. Mr. Ponda invited the attention of the Court to illustration (c) and (d) to Section 464 of the Indian Penal Code to buttress the submission that a clear case of forgery is made out as the Applicants have filled in the dates as well as the amounts in the blank signed cheques delivered by way of security.

17. Mr. Ponda placed reliance on a number of judgments enunciating the parameters for grant of pre-arrest bail, namely **Maruti N. Navle V/s. State of Maharashtra and Ors.**[7], **P. Chidambaram V/s. Directorate of Enforcement**[8], **State (CBI) V/s. Anil Sharma**[9]. Mr. Ponda also placed reliance on the judgments of the Supreme Court in the case of **Iridium India Telecom Ltd. V/s. Motorola Incorporated and Ors.**[10], **Delhi Development Authority V/s. Skipper Construction Co. (P) Ltd. and Anr.**[11] and **State of Karnataka V/s. J. Jayalalitha and Ors.**[12] to lend support to the submission that when the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court

7 2012 (9) SCC 235
8 2019(9) SCC 24
9 1997(7) SCC 187
10 (2011) 1 SCC 74
11 (1996) 4 SCC 622
12 (2017) 6 SCC 263

ought to ignore the corporate character and look at the reality behind the corporate veil.

18. Mr. Jha, the learned Counsel for the Applicant / Intervener in IA No.1055 of 2022 in ABA No.753 of 2022, submitted that the demand notice under Section 138 of the N.I.Act, clearly betrays the fraud on the part of the Applicants/accused and the endeavour on the part of the Applicants to fall back on the terms of the contract does not merit countenance. The question whether DFSI had the authority to fill in the contents of the cheques, involves intricate question of facts which is essentially a matter of trial. Therefore, at this stage, in the face of the gravity of the allegations, the Applicants do not deserve relief of pre-arrest bail. Reliance was placed on the judgment of the Delhi High Court in the case of **Citi Bank, N.A. V/s. The State (NCT of Delhi) and Ors.**[13] and of the Supreme Court in the case of **Sripati Singh (since deceased) through His son Gaurav Singh V/s. State of Jharkhand and Anr.**[14]

19. It was further submitted that the fact that the offence arose out of a commercial transaction cannot be a sustainable ground to grant pre-arrest bail to the Applicants. Strong reliance was placed on the judgment of the Supreme Court in the case of **Rajesh Bajaj V/s. State NCT of Delhi and Ors.**[15], wherein the Supreme Court observed that "many a cheatings have been committed in the course of commercial and also money transactions. The crux of the postulate is

13 2011(2) JCC 1274
14 2021 SCC Online SC 1002
15 (1999) 3 SCC 259

the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.".

20. Lastly, Mr. Jha placed reliance on the judgment of the Supreme Court in the case of **Nimmagadda Prasad V/s. Central Bureau of Investigation**[16] wherein it was enunciated that 'economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country".

20. I have given my anxious consideration to the aforesaid submissions.

21. First and foremost, the parameters which are germane while exercising discretion under Section 438 of the Code need to be kept in view. The submissions extracted above evidently touch upon the broad issue as regards the question as to whether the Applicants had the authority to fill in the particulars of the cheques and present the same for encashment. It would surely warrant a detailed appraisal of the terms of the various contracts executed by and between the parties. The broad facts which emerge are that the subject cheques were delivered as signed blank cheques to cover the liability incurred by the informant's companies under the various

16 (2013) 7 SCC 466

agreements evidencing the loan and financial assistance provided by DFSI. The delivery of the subject cheques is not a matter of contest. The controversy between the parties, to some extent, revolves around the period during which the subject cheques were delivered. In the demand notice, DFSI claimed that the cheques were issued in the month of November, 2021. In contrast, there is material to show that the subject cheques were delivered at an anterior point of time. Thus, the Applicants made an endeavour to assert that under the terms of the Wholesale Master Loan Agreement, DFSI was entitled to use the subject cheques either by way of collateral or under cross default clause.

22. The primary question which comes to the fore is whether the filling in of the contents of the blank signed cheques by itself constitutes offences of cheating and forgery. Though the said question is often rooted in facts, yet on the legal premise, mere filling in of the contents of the blank signed cheques and the subsequent presentation thereof, may not by itself, fall within the dragnet of the offences punishable under Sections 420 and 467 of the Penal Code. The legal position has developed, albeit in the context of the offence punishable under Section 138 of the N.I.Act, to the effect that a person who delivers the signed blank cheques incurs the liability unless he succeeds in dislodging presumptions contained in Sections 139 and 118 of the N.I.Act.

23. In the case of **Bir Singh (supra)**, the Supreme Court enunciated the

position as under :

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> 34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> 35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
>
> 36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

24.

The aforesaid judgment in the case of **Bir Singh (supra)**, was followed by the

Supreme Court in a recent judgment in the case of Oriental Bank of Commerce V/s. Prabodh Kumar Tewari[17]. After extracting the observations in paragraphs 33, 34 and 36 (extracted above), the Supreme Court expounded the legal position as under :

> 15.The above view was recently reiterated by a three-Judge Bench of this Court in **Kalamani Tex V. P. Balasubramanian**[18]
>
> 16. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.
>
> 17. In **Anss Rajashekhar V. Augustus Jeba Ananth**[19] a two Jude Bench of this Court of which one of us (D.Y.Chandrachud J.) was a part, reiterated the decision of the three-Judge Bench of this Court in **Rangappa V. Sri Mohan**[20] on the presumption under Section 139 of the NI Act. The Court held :
>
> *12. Section 139 of the Act mandates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression 'unless the contrary is proved' indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a "reverse onus clause" the three Judge Bench of this Court in Rangappa held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities. This Court held thus :*
>
> *"28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of*

17 2022 SCC Online SC 1089
18 (2021) 5 SCC 283
19 (2020) 15 SCC 348
20 (2010) 11 SCC 441

probabilities." Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

18. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability."

25. In the instant case, the fact that FIR does not refer to the execution of the Forbearance Agreement between the parties, cannot be said to be immaterial or insignificant. In the Forbearance Agreement executed by and between DFSI, KGP Auto Ltd. and Ghatge Motors Pvt. Ltd. and others including Mr. Satish Ghatge, - first informant, in the capacity of the guarantor, there is a clear assertion that KGP Auto Ltd., had sold the vehicles SOT and as of 20th September, 2019, Rs.328.88 Millions was due and DFSI agreed to forebear from taking action subject to certain conditions. There are convenants in the said Forbearance Agreement which record that the borrower and guarantor acknowledged and agreed that the total amount of INR 1183.9 million due on the loans was fully due and payable without defense or offset and the borrower and guarantor were in default of their obligations to DFSI and

but for the Forbearance Agreement, DFSI could have exercised its rights and remedies with respect to such defaults. It further provided that existing rights of DFSI would continue to operate and be enforceable. The said Forbearance Agreement came to be further extended by 'Amendment 1' dated 30th December, 2019 and stood extended till 31st March, 2020.

26. The aforesaid Forbearance Agreement, thus, recorded and acknowledged the existence of debts owed by informant's companies to DFSI, in the least. Though the learned Counsel for the parties made an endeavour to take the Court through the various clauses of the Wholesale Master Loan Agreement executed between the parties to bolster up their respective submissions, as noted above, at this stage, it may not be warranted to delve deep into the terms of the contract to ascertain as to whether DFSI had the authority to fill in the contents of the cheques and present those cheques for encashment by resorting to the various clauses.

27. Few clauses of the agreement are extracted below only to underscore the comprehensive nature of the liability incurred by the borrower. In the Wholesale Master Loan Agreement, Collateral is defined in Clause 1.1 (page 492 of the Interim Application No.1056 of 2022). The relevant part of which reads as under :

> "Collateral shall mean the following present and future property and rights of the Borrower :
>
> a. All Products, including without limitation, all new and used motor vehicle, and further including without limitation, all Products on order, but not yet delivered to the Borrower, and all consigned Products;

b. All fittings and fixtures, including without limitation, all furniture, fixtures, machinery, tools, and all additions, substitutions, replacements, accessories, attachments and accessions;

c. All accounts and the monies lying therein from time to time, including but not limited to the New Operating Account and the Operating Account, contract rights, instruments, documents, promissory notes and supporting obligations;

………"

28. Clause 10.5 provides for enforcement of the Collateral (page 499) which reads as under :

> "10.5 The Borrower agrees, declares and confirms that, notwithstanding any of the provisions of the Indian Contract Act, 1872 or any other Applicable Law, or any terms and conditions to the contrary contained in this Agreement, the Lender may, at its absolute discretion, appropriate any payments made by the Borrower under this Agreement/any amounts realized by the Lender by enforcement of the Collateral, towards the dues payable by the Borrower to the Lender under the Agreement and/or other agreements entered into between the Borrower and the Lender and in any manner whatsoever."

29. The consequences of event of default are provided in clause 23.2, the relevant part of which read thus :

> "On the happening of any of the Events of Default, the Lender may, by a notice in writing to the Borrower :
>
> (i) terminate the Loan and/or call upon the Borrower to pay all the dues in respect of the Loan;
>
> (ii) suspend further access/drawals by the Borrower to the use of the unused portion of the Overall limits. The access of the Borrower to the Overall Limits shall continue to be suspended until the Lender has notified the Borrower of any restoration;

(iii) declare the security created, if any, in terms of the Transaction Documents (including without limitation the security interest created over the collateral) to be enforceable, and notwithstanding anything to the contrary contained in the Transaction Documents the Lender or such other person in favour of whom such security or any part thereof is created shall have, inter alia, the following rights namely :

a. to enter upon and take possession of the assets comprised within the security, if any; and/or

b. to transfer the assets comprised within the security created, if any by way of lease, leave and license, sale or otherwise;

30. Clause 29 provides for Cross Default and Set Off, as under :

"29.1 The Borrower agrees and confirms that the Lender may at its absolute discretion appropriate any payments made by the Borrower under the Agreement towards payment due from the Borrower and/or the Guarantor and/or company promoted by the Borrower and/or any Person being part of the Affiliates under another agreement or transaction executed by the Borrower and/or the Guarantor and/or any company promoted by the Borrower and/or any person being part of the Affiliates with the Lender Group Companies and such appropriation shall be final and binding upon the Borrower who shall continue to remain indebted to the Lender for payment of dues under this Agreement in respect of which such sums of money were so paid but were appropriated towards another agreement or transaction entered into by the Borrower and/or the Guarantor and/or any company promoted by the Borrower and/or any person being part of the Affiliates.

29.2 In addition, notwithstanding the payment of any part of the Overall Limit along with Applicable interest Rate, the Borrower hereby expressly gives the Lender the power to appropriate any and all security interest (and any guarantees) created in favour of the Lender in terms of this Agreement and appropriate the same towards satisfaction of amounts due to the Lender Group Companies on account of another agreement or transaction

> entered into by the Borrower and/or the Guarantor and/or any company promoted by the Borrower and/or any Person being part of the Affiliates or any Indebtedness of eh Borrower and/or any Person being part of the Affiliates."

31. In the backdrop of the aforesaid clauses, I am persuaded to agree with the submissions on behalf of the Applicants that the question as to whether DFSI had the authority to present the cheques for encashment by filling in the contents thereof, turns upon the interpretation of the aforesaid terms of contract and is essentially a matter for trial, which may arise out of instant FIR, or for that matter, in the complaints lodged by DFSI under Section 138 of the N.I.Act.

32. This leads me to Ms. Dabholkar's submission, which was canvassed with a degree of vehemence, that the Applicants have also committed forgery of the Wholesale Master Loan Agreement purported to be executed in the year 2019. Inviting the attention of the Court to the observations of the learned Session Judge in Para 25 where the learned Sessions Judge inter alia observed that the set of documents which were produced before the Court were not identical to the set of documents produced before the IO through the representative of DFSI, the prosecution pressed into service the fact that the copy of the Wholesale Master Loan Agreement which was produced by the DFSI before the IO, and, in turn, tendered before the Court by I.O. (Exhibit Q – page 430) contains the signatures of two authorized signatories of DFSI, whereas the copy of the document which was tendered before the Court by the

Applicants (Exhibit S – page 479) contains the signature of one authorized signatory of DFSI. Therefore, the Applicants forged the said document as well.

33. The Applicants have endeavoured to offer an explanation as to how the second signatory subsequently signed the said agreement. What is of material significance is the fact that the execution of the agreement on behalf of KGP Auto Ltd., has not been put in contest. In such circumstances, whether putting the signature by the second authorized signatory subsequent to the document having been executed by the first authorized signatory and the borrower would constitute a forgery, would be a matter for consideration at the trial. In any event, it may not bear upon the gravamen of allegations in the FIR which revolve around the misuse of the custody of the signed blank cheques.

34. At this juncture, the fact that the offences revolve around the execution of the documents cannot be lost sight of. The underlying transaction between the parties where the informant's companies and the first informant acknowledged huge liability is also of material significance. This factor bears upon the submissions on behalf of the prosecution and the first informant premised on economic offences. Indisputedly, the offences do not involve siphoning of public money. On the contrary, the genesis of the offences is in the dispute between the parties which arose out of purely commercial transactions.

35. In the backdrop of the nature of accusation, custodial interrogation of

the Applicants does not seem warranted at this length of time. In any event, the concern of investigating agency can be taken are of by directing the Applicants to co-operate with the investigation and appear before the investigating officer as and when directed. This would also address the issue of discovery under Section 27 of the Evidence Act, 1872, as expounded by the Supreme court in para No.92.8 of the Constitution Bench Judgment in the case of Sushila Aggarwal and Ors. V/s. State (NCT of Delhi) and Anr.[21] The Applicants also appear to have roots in society.

36. The Court is also required to take cautious cognizance of the fact that by an order dated 1st July, 2022 in Criminal Writ Petition No.1862 of 2022 and other connected Writ Petitions, the parties have been referred to mediation and the State authorities have been directed not to take any precipitative action against the Applicants/Petitioners therein and their employees in the criminal proceedings arising out of and which would arise from the disputes that have been referred for mediation. Indisputably, the mediation is still underway.

37. In the totality of the circumstances, I am persuaded to exercise the discretion in favour of the Applicants.

38. Hence, the following order :

ORDER

(i) The Anticipatory Bail Application Nos.752 of 2022, 753 of 2022,

21 (2020) 5 SCC 1

1460 of 2022 and 1461 of 2022 stand allowed.

(ii) In the event of the arrest of the Applicants – Harish Chand Jain, Ingo Krueger, Latha Venkatesh, Brendon James Sissing, Anita Ganesan Iyer, Madan Gopal Bharadwaj and Manish Dinesh Thakore in C.R.Nos.164 of 2022 and 165 of 2022 registered with Shahapuri Police Station, Kolhapur for the offences punishable under Sections 465, 467, 468, 471, 409, 420 and 511 read with 34 of Indian Penal Code, 1860, they be released on bail on furnishing a PR bond in the sum of Rs.25,000/- each and one or two sureties in the like amount.

(iii) The Applicants shall co-operate with the investigation and appear before the Investigating Officer as and when directed by the Investigating Officer with 7 days prior notice.

(iv) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The Applicants shall furnish their permanent residential address and contact details to the Investigation Officer.

(v) The Applicants shall not leave the country without three days prior intimation to the Investigating Officer clearly indicating the date of leaving the country and the date of return and contact details and the phone number on which the Applicants can be contacted by the Investigating Officer, while they are abroad.

(vi) In view of the disposal of the Anticipatory Bail Applications, All Interim Applications stand disposed.

(N.J.JAMADAR, J.)