

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2882 OF 2021**

Badre Alam Mohammad Sajjad Shaikh ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.150 OF 2022

Pradeep Ramakant Chaube ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.637 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.150 OF 2022

Dayaram Zagdu Yadav ... Applicant/Intervener
and
Pradeep Ramakant Chaube ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Rajendra Rathod with Mr. Sohonil Ahmed, Mr. Zeeshan Sardar , for Applicant in ABA 2882 of 2021.
Dr. Abhinav Chandrachud i/by Mr. Kamran Shaikh, for Applicant in ABA 150 of 2022.
Mr. Vinod S. Chate with Ms. Kalpana V. Chate, Mr. Pavan Vadgaonkar i/by Chate and Associates, for Intervener.
Mr. Y.Y.Dabake, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 29th JUNE, 2022

P.C.

1. These Applications are preferred for pre-arrest bail in connection with

C.R.No.277 of 2021 registered with Kalamboli Police Station for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code, 1860.

2. Dayaram Zagdu Yadav, the first informant, deals in the business of crane. In the year 2016, the first informant got acquainted with Badre Alam – Applicant in ABA 2882 of 2021, as the latter was also dealing in the business of renting out the cranes. Badre Alam represented to the first informant that he and Pradeep – Applicant in ABA 150 of 2022, were the partners of Trimurti Enterprises, which was engaged in the business of construction. Simplex Infrastructure Limited, another entity had a work order to construct road at Srinagar, J&K. Trimurty Enterprise was engaged as a sub-contractor. Trimurti Enterprises required a crane for executing the said work. On the representation of Badre Alam, the first informant agreed to give his crane MC 9115 of Lawren make, bearing No.NL-2-Q-3653, for six months at a monthly rent of Rs.3,50,000/- with an option to continue the said arrangement till the said work lasted. Pradeep Chaube accordingly moved the said crane from Maliyabad, Uttar Pradesh to Shrinagar.

3. The first informant alleges that the Applicant paid a sum of Rs.32,64,500/- only against the liability to pay for the use of the services of the crane for 24 months. When the first informant demanded the Applicant – Pradeep Chaube, to pay the balance amount, Pradeep Chaube initially bought time on one or the other

pretext. The Applicant – Pradeep Chaube neither paid the outstanding amount, nor returned the crane. The first informant, thus, met the Applicant – Badre Alam. The latter claimed that he had no concern with the said transaction.

4. Hence, the first informant lodged a complaint for the offences punishable under Section 420 and 406 of the Indian Penal Code, 1860 with the allegation that he had entrusted the crane to the Applicants and the latter committed default in payment of the hire charges as agreed, and thereby cheated him. By not returning the crane, the Applicants also committed criminal breach of trust. The learned Magistrate was persuaded to order investigation under Section 156(3) of the Code of Criminal Procedure, 1973. On the strength of the said order, an offence was registered at Kalamboli Police Station vide C.R.No.277 of 2021.

5. Apprehending arrest, the Applicants preferred these Applications. By an order dated 7th December, 2021 in ABA No.2882 of 2021, this Court was persuaded to grant interim pre-arrest bail to the Applicant – Badre Alam. In ABA No.150 of 2022, by an order dated 27th January, 2022, interim protection was granted to the Applicant – Pradeep Chaube, since Badre Alam – Applicant in ABA 2882 of 2021 was protected.

6. I have heard Mr. Rathod, learned Counsel for the Applicant in ABA No.2882 of 2021 and Dr. Chandrachud, learned Counsel for the Applicant in ABA No.150 of 2022, the learned APP for the State in both the Applications and Mr. Chate,

learned Counsel for the Intervener – first informant.

Anticipatory Bail Application No.2882 of 2021 :

7. The learned Counsel for the Applicant submitted that there is no material to connect the Applicant with the crime. In fact, there was no transaction of whatsoever nature between the Applicant and the first informant. The Applicant is neither a partner of Trimurti Enterprises. Nor the Applicant had executed any agreement. At best, the Applicant can be said to have been roped in for the only reason that he introduced the Applicant – Pradeep Chaube to the first informant.

8. The learned APP and the learned Counsel for the first informant resisted the prayer of the Applicant by asserting that it was the Applicant who introduced the Applicant – Pradeep Chaube to the first informant and made initial representations. Thus, though there is no material to show that the Applicant was infact a partner of Trimurty Enterprises and executed any document in that capacity, the complicity of the Applicant is made out by the allegations in the FIR.

9. A copy of the deed of partnership is placed on record, which shows that apart from the Applicant – Pradeep Chaube, Mr. Mangesh Salvi, was another partner of Trimurti Enterprises. Evidently, the Applicant – Badre Alam is not a partner. Nor any document appears to have been executed by the Applicant. A copy of the Work Order, under which the crane was hired, is also not signed by the Applicant.

10. In the aforesaid view of the matter, the submissions on the part of the

Applicant that he had no concern with Trimurti Enterprises and the allegations of fraudulent representation and the consequent inducement to part with the crane or entrustment of the crane are, prima facie, not attributable to him, cannot be said to be without substance. I am, therefore, persuaded to confirm the order dated 7th December, 2021 of interim pre-arrest bail as there is no material which warrants the custodial interrogation of the Applicant necessary for effective investigation.

Anticipatory Bail Application No.150 of 2022 :

11. Dr. Chandrachud, learned Counsel for the Applicant submitted that even if the case of the first informant is taken at par, no case of cheating can be said to have been made out. Laying emphasis on the fact that the first informant alleges that a part of the hire charges was paid by the Applicant and the principal grievance is about non-payment of the balance hire charges, it was submitted that, by no stretch of imagination, the elements necessary to constitute an offence of cheating are made out. Since the Applicant had hired the crane and, on the own showing of the first informant, a sum of Rs.32,64,500/- has been paid by the Applicant, it would be impermissible to draw an inference that the intention of the Applicant was dishonest since the inception of the transaction. Failure to pay the balance hire charges would per-dominantly constitute a civil dispute sans any element of criminality.

12. To lend support to this submission, Dr. Chandrachud placed reliance on a Division Bench judgment of this Court in the case of Babusingh Pokarsingh

*Rajpurohit V/s. The State of Maharashtra and Anr.*¹ wherein it was, inter alia, observed as under :

“10. We have thoroughly considered the submissions advanced in the light of the charge-sheet filed against the petitioner. If we consider the very foundation of criminal proceedings initiated against the petitioner, then, it can be seen that the prosecution has approached with a case that from April, 2007 to December, 2009 cloth material worth Rs.1,06,14,411/- was purchased by accused and during that period total amount of Rs.81,98,842/- has been paid to respondent No.2 towards the goods purchased and amount of Rs.24,15,569/- was lying due against the petitioner. Thus, the very basis of the criminal case initiated against the petitioner is an unpaid amount of Rs.24,15,569/- due against accused towards the goods purchased on credit during April, 2007 to December, 2009. Therefore, if we consider the entire case of the prosecution to be true and correct, then still no offence punishable under sections 420 and 406 of the Indian Penal Code can said to be attracted as against the petitioner.

11. Dishonest intention from the very beginning is sine wp1094-12 qua non to attract the commission of offence under section 420 of Indian Penal Code. Even if we consider the allegations made in the complaint as true and correct, still the petitioner cannot be said to have committed offence of cheating. Admittedly, the goods in question were purchased on credit in the account opened by complainant-respondent No.2 in the name of accused. As against purchase of goods worth Rs.1,06,14,411/- an amount of Rs.81,98,842/- has been paid to complainant-respondent No.2. The criminal proceedings has been instituted against the petitioner and co-accused for the reason that Rs.24,15,569/- which was due and payable by them in the account was not paid by them in spite of repeated demands by complainant respondent No.2. Thus, the allegations made in the complaint and evidence gathered by the prosecution as presented in the form of charge-sheet no

1 2016 SCC Online Bom 1484,

where discloses that the petitioner had acted with dishonest intention from the very beginning. If they had any intention to deceive the complainant from the beginning, then, payment of Rs.81,98,842/- would not have been made by them. Only for the reason that certain amount was due and not paid, dishonest intention on their part cannot be inferred in law.”

13. Dr. Chandrachud further submitted that the prosecution suffers from another vital infirmity. The learned Magistrate ordered investigation under Section 156(3) of the Code, in the absence of an Affidavit of the complainant in support of the allegations, in conformity with the judgment of the Supreme Court in the case of *Priyanka Srivastava and Anr. V/s. State of Uttar Pradesh and Ors.*². Failure to adhere to the mandatory directions therein, according to Dr. Chandrachud, has been construed to furnish a ground for quashing the prosecution.

14. There can be no two views about the mandatory nature of the directions to file an affidavit, in the judgment of the Supreme Court in the case of Priyanka Srivastava (supra). However, in the case at hand, it appears that the complaint was duly supported by an affidavit affirmed by the first informant (page 29 of the Application). I am, therefore, not inclined to delve into this aspect of the matter any more.

15. In a commercial transaction, ordinarily, a mere failure to perform a promise, which causes injury to the promisee, does not amount to cheating. It has to be shown that both the elements, namely, deceit and injury were present. An offence

² (2015) 6 SCC 287

of cheating can be said to have been made out if from the nature of the transaction and the attendant circumstances, a legitimate inference can be drawn that the intention of the accused was dishonest since the inception of the transaction and the transaction was a mere subterfuge to lure the victim. If the accused has made a part payment and subsequently, there is a default on the part of the accused to pay the price of goods/services or perform any other promise, dishonest intention since inception of the transaction cannot be, generally, attributed.

16. In the case at hand, what is of critical significance is the fact that the Applicant is alleged to have neither paid the balance hire charges nor returned the crane. On the first count of allegation, Dr. Chandrachud would urge that the Applicant, in turn, could not get payment from Simplex Infrastructure Ltd., on whose project the crane was employed. Simplex Infrastructure Ltd., also alleged that the crane had broken down and, therefore, it withheld the payment. This essentially gives rise to a civil dispute, urged Dr. Chandrachud. It is, however, imperative to note that the material on record does not indicate that, at any point of time, the Applicant had raised a grievance that the crane which was hired had broken down and, therefore, the Applicant was not liable to make the payment.

17. The failure on the part of the Applicant to return the crane is a matter which necessitates effective investigation. Indisputably, the crane was entrusted to the Applicant for a particular purpose and period. The crane was not returned even

after 24 months of the work order.

17. Dr. Chandrachud attempted to salvage the position by banking upon the FIR bearing No.043 lodged at Parampora Police Station, Srinagar, by the Applicant, to the effect that the crane was missing from the project site. I am afraid the aforesaid report would assist the cause of the Applicant. It is pertinent to note that the said report came to be lodged after the filing of this Application. In the Application, the Applicant had not adverted to the said fact of alleged theft of the crane. In this context, an endeavour on the part of the applicant to press into service the situation which arose on account of abrogation of Article 370 and Covid-19 pandemic in Jammu and Kashmir, does not merit countenance.

18. The hard fact is that the crane was entrusted to the Applicant. The Applicant failed to deliver the crane back to the complainant in accordance with the terms of the contract, evidenced by the work order. A report of theft which came to be lodged not only after the filing of the complaint in the instant case but also the instant application for pre-arrest bail before this Court, cannot be pressed into service to wriggle out of the situation. From this standpoint, in my considered view, the custodial interrogation of the Applicant is necessary. Lest an effective investigation would be a casualty.

19. I am, therefore, inclined to reject the Application. Hence, the following order :

ORDER

- (i) Anticipatory Bail Application No.2882 of 2021 stands allowed.
- (ii) The interim order dated 7th December, 2021 granting pre-arrest bail to the Applicant is made absolute on the terms and conditions incorporated therein.
- (iii) In addition, the Applicant shall regularly attend the proceedings before the jurisdictional Court.
- (iv) Anticipatory Bail Application No.150 of 2022 stands rejected.
- (v) Interim protection stands vacated.
- (vi) In view of the disposal of the ABA No.150 of 2022, Intervention Application No.637 of 2022 does not survive and stands disposed.

(N.J.JAMADAR, J.)