

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 212 OF 2023

Shaikh Abdul Rohim Shaikh Abdul Rahaman ..APPLICANT

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr. S.R. Bagal, Advocate h/f Mr. B.N. Gadegaonkar, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondents

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**CORAM : R.G. AVACHAT, J.
DATED : 10th MARCH, 2023**

PER COURT :

1. This is an application under Section 438 of Code of Criminal Procedure. The applicant claims to have an apprehension of being arrested in connection with Crime No. 379 of 2020 registered with Itwara Police Station, Dist. Nanded for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code ('I.P.C.').

2. Heard. Perused First Information Report ('F.I.R.') and related police papers.

3. F.I.R. has been lodged by one Shaikh Nasiroddin. The informant was in jewelry business. He runs a jewelry shop at Nanded. He has been in

the said business for little over twenty years. It is his case that he would advance money to jewelry makers to buy gold from market. He would charge 5% commission on the cost of jewelry. The applicant and co-accused – Shaikh Jalil Shaikh Abdul Rahaman were jewelry makers. Both of them used to take money from the informant to buy gold. The informant has maintained a diary of transactions between him and the applicant and co-accused. Both of them had agreed to pay him 5% commission. It is his case in the F.I.R. itself that for a few years, the transactions between him and them were smooth. It is only on 15th February, 2019 the applicant received Rs.4,80,000/- from the informant to buy 150 gms. of gold, while the co-accused was paid equal amount for the same purpose. Both of them did not return the money nor gave him gold ornaments. He, therefore, lodged the F.I.R.

4. Learned counsel for the applicant would submit that averments in the F.I.R. suggest it is a case of civil dispute. The applicant has in fact repaid the money. Co-accused has been granted bail post his arrest. He, therefore, urged for grant of application.

5. Learned A.P.P. would, on the other hand, submit that ingredients of the offence of cheating are made out. Custodial interrogation of the applicant is warranted. The applicant is the resident of West Bengal. The investigating team had been to the West Bengal in search for him. The applicant is absconding. He, therefore, urged for rejection of the application.

6. The averments in the F.I.R. indicate that the applicant and co-accused would make gold ornaments. They would receive money as advance from the informant. The informant would charge them 5% commission on the cost of gold ornaments. The business dealings between the two continued for a long. The default pertains to the transaction dated 15th February, 2019, for the incident of which the F.I.R. has been lodged. Learned counsel for the applicant has reason to contend that the informant has adopted the short-cut method to recover the amount of the transaction civil in nature. The Court is in agreement with the submissions made by the learned counsel. A receipt from the diary was brought to the notice of this Court. Perusal thereof however, does not indicate nature of transaction between the two.

7. The Court had called upon the applicant to pay back the informant's money. Learned counsel for the applicant would submit that the applicant has already paid back the amount due to the informant and his financial condition is such that he is unable to pay any more.

8. Be that as it may. Since the F.I.R. indicates it to be a case somewhat of civil nature, the Court is inclined to grant the application. The observations made herein are tentative in nature and trial Court shall not be influenced thereby.

9. In the factual backdrop of the case, the applicant needs to be granted anticipatory bail. Hence the following order :-

ORDER

(I) Application is allowed.

(II) In the event of arrest of the applicant, in connection with Crime No. 379 of 2020 registered with Itwara Police Station, Dist. Nanded for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code, the applicant be released on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety in the like amount.

(III) The applicant shall appear before the investigating officer, as and when required for the investigating purpose.

(IV) The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD