

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1188 OF 2023

Sudhakar Dilip Sole

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. A. A. Khande, Advocate for the applicant.

Mr. S. W. Munde, APP for the State.

Mr. N. D. Kendre, Advocate for informant.

CORAM : R. M. JOSHI, J.

DATE : 15th SEPTEMBER, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 0132/2023 registered with Patoda Police Station, Tq. Patoda, Dist. Beed, for the offences punishable under Sections 406, 409 and 420 of Indian Penal Code.

2. First Information Report lodged by the Zonal Manager of India One Payment Limited, shows that some agreement was entered into between informant and applicant in respect of depositing cash in two ATMs. As per the said agreement, the amount was required to be deposited every day on receipt thereof. It is alleged that the applicant was found to have not deposited the said amount to the extent of

Rs. 20,68,000/-. Thus, mis-appropriation of said amount is alleged against the applicant.

3. Learned counsel for applicant submits that there is agreement entered into between the parties in respect of the said deposit. He also drew attention of the Court to the notice issued by the informant to the applicant wherein on the said amount of Rs. 20,68,000/-, interest at the rate of 12% per annum was sought. He further states that the cheques issued by the applicant are already tendered by realisation with the bank. Thus, it is his submission that this is a case of breach of contract and not offence.

4. Learned APP and learned counsel for informant opposed the said contention by stating that the act of not depositing cash in the ATM inspite of agreement is clear breach of trust on his behalf. Thus, it is not a case for grant of anticipatory bail.

5. Record indicates that there is agreement between the parties for the purpose of deposit of cash in the ATM by the applicant. He was expected to deposit the same immediately after its receipt. Perusal of notice dated 17th May, 2023 issued by the

informant to the applicant clearly shows that it is the case of the informant that for delay in depositing the amount, the same shall attract penal interest at the rate of 12% per annum, which hints towards dispute of breach of contract and civil nature thereof. The applicant has already deposited sum of Rs. 19,00,000/- in this Court. Thus, almost entire amount is secured.

6. Learned counsel for informant seeks permission to withdraw the said amount. The said request is opposed by learned counsel for the applicant on the ground that the same would be subject to decision of the trial. He further states that cheques issued by the applicant are also sent for realisation by the informant. Having regard to the nature of office, it would not be appropriate to permit the informant to withdraw the said amount at this stage. The said amount shall be transferred to the Trial Court with direction that the amount be kept in fixed deposit in any Nationalised Bank till conclusion of the trial. In view of the above, application is allowed.

(R. M. JOSHI)
Judge