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Mr. Amit Palkar, APP for the State.

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CORAM: N.R. BORKAR, J.

DATED : 9 FEBRUARY 2023

P.C. :-

This is an application filed under Section 438 of the Code of Criminal Procedure, 1973 for anticipatory bail.

2. The applicant is apprehending his arrest in Crime No. 1125 of 2022 registered at Hinjawadi Police Station, Pune for the offences punishable under Sections 406, 420 r/w. 34 of Indian Penal Code.

3. I have heard the learned Counsel for the applicant and the learned APP for the State.

4. According to the complainant, he was in need of capital to augment his business. He got acquainted with the present applicant

through co-accused in the present crime. It is alleged that the present applicant had assured him to make available loan of Rs.200 crore at minimal rate of interest on the condition that the applicant would have to pay him commission for the same. According to the complainant, from time to time he had paid Rs.79 lakhs towards the said commission, however, neither loan is made available as assured nor the amount is returned.

5. The learned Counsel for the applicant submits that the complainant has not disclosed the true facts while lodging the FIR. It is submitted that the dispute is of purely civil nature. The learned Counsel for the applicant submits that criminal law cannot be utilized for money recovery. It is submitted that even otherwise there is no need of custodial interrogation. It is thus submitted that, the applicant may be released on anticipatory bail. In support of submission, the learned Counsel for the applicant has relied upon the Judgment in the case of *Bimla Tiwari v. State of Bihar and others*¹, wherein the Hon'ble Supreme has observed :

“We would reiterate that the process of criminal law cannot be utilized for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or

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regular bail could be granted irrespective of any payment or any offer of payment.”

6. The fact that the applicant has received the amount of Rs.79 lakhs is not disputed. According to the applicant, the complainant has not disclosed these facts, while lodging the FIR. The applicant has, however, not disclosed what was that transaction against which he has received the huge amount of Rs.79 lakhs. There is no dispute that process of criminal law cannot be used for money recovery, however, when allegations of cheating are made, which in my view are prima facie made out in the present case, the applicant ought to have disclosed what was that true transaction. Considering the overall facts, I am not inclined to grant anticipatory bail to the present applicant. In the result, the following order is passed :

(i) Application is rejected.

(N.R. BORKAR, J.)

KANCHAN
PRASHANT
DHURI

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