

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 673 OF 2023

Junaid Samad Khan

Age : About 39 Years, Occu. : Business,

Residing at : Room No.102, Building

No.5, Gaurav Ratan Building, Near

Green Court Club, Mira Road (E),

Thane : 401 107.

...Applicant

vs.

The State of Maharashtra

At the instance of Kalyan Rural

Police Station [Vide C.R.No.0590 of 2022]

...Respondent

Mr.S.G.Kudle, Advocate for the Applicant.

Mr.H.J.Dedhia – APP for the Respondent-State.

Ms.Swati Jagtap – PSI – Kalyan Taluka Police Station.

CORAM : S. M. MODAK, J.

DATE : 10th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State yesterday and today also.

2. He is apprehending an arrest in connection with C.R. No. 590 of 2022 registered with Kalyan Taluka Police Station on 2nd

December, 2022. It is on the complaint of one Tajish Naeem Kungale under Sections 120-B, 406, 420, 504 and 506 of the Indian Penal Code, 1860 [“IPC”]. The FIR is registered on the basis of directions given by the Court of JMFC under Section 156(3) of the Code of Criminal Procedure, 1973 [“Cr.P.C.”].

3. The sum and substance of the FIR is that the First-Informant has given a hand loan to the Applicant and learned APP pointed out to me a copy of agreement cum understanding dated 25th September, 2021. The First-Informant had advanced money time and again to the extent of Rs.65,00,000/-. The agreement also mentions about issuance of 7 cheques. They were dishonoured on presentment. The contention of the First-Informant is that in fact, the Applicant was not possessing sufficient balance when he issued those cheques and dishonestly he has issued those cheques.

4. As against this, it is contended on behalf of the Applicant that in fact, the First-Informant has duped the Applicant and a complaint was filed by him with Kashmir Police Station on 22nd November, 2021, the present Applicant was informed to approach the concerned Authorities. It was informed by Kashmir Police Station vide letter dated 24th February, 2022.

5. It is surprising how Section 120-B of IPC is made applicable, particularly when there is only one Accused and there are no averments about hatching a criminal conspiracy. Learned APP submitted that they will delete that Section if it is not disclosed during investigation. After hearing both the sides, I think that the Applicant needs to be protected from arrest. If it is on the basis of dishonour of cheques, law will take its own course and the Police machinery cannot be used for recovery of money. There are certain ingredients for an offence under Sections 420, 406 of IPC. They need to be satisfied. Hence, I think case is made out. Hence, order :-

O R D E R

- (i) Application is allowed.
- (ii) In case of arrest in connection with C.R.No.590 of 2022 registered with Kalyan Taluka Police Station, under Sections 120-B, 406, 420, 504 and 506 of IPC, the Applicant be released on furnishing Personal Bond and Surety Bond of Rs.25,000/-.
- (iii) The Applicant to give attendance to Kalyan Taluka Police Station on Monday and Friday from 10.00 to 12.00 noon until filing of charge-sheet.
- (iv) Applicant not to leave the jurisdiction of Thane District till filing of charge-sheet without permission of the concerned Court of JMFC.

6. It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.
7. Application is disposed of in the aforesaid terms.
8. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]