

*SA Pathan*

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

**ANTICIPATORY BAIL APPLICATION NO. 792 OF 2023**

Pratiksha Sunil Deshmukh & Anr. ... Applicants  
V/s.  
The State of Maharashtra & Anr. ... Respondents

Mr. Satyavrat Joshi i/by Ms. Shivani Kondekar, for the Applicant.

Mr. Pandurang H. Gaikwad, APP for the State-Respondent.

Mr. Pawan Mali, for Respondent No.2 (appointed as legal-aid counsel).

Mr. R. S. Patil, Khopoli police station Raigad.

**CORAM : AMIT BORKAR, J.**

**DATED : JUNE 13, 2023**

**PC.:**

1. This is an application under Section 438 of the Code of Criminal Procedure (for short 'Cr.PC.') in connection with C.R.No.13 of 2023 registered with Khopoli police station, Raigad for the offences punishable under Sections 406, 417, 420 r/w 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. According to the prosecution, the informant lodged complaint on her behalf and twelve other persons, alleging that the applicant No.1 had sought financial help from the informant for a litigation of property of Rs.1.5 crores. The applicant No.1 promised that she will return money within six months. A cheque of Rs.28,55,000/- was issued in favour of the informant has been

dishonored. The complaint under Section 138 of the Negotiable Instruments Act, 1881 has therefore, filed against the applicant which is pending before the competent Court. She lodged a report against the applicant. The applicant, therefore, been filed an application under Section 438 Cr.P.C. before learned Sessions Judge which has been rejected by an order dated 8 March 2023. Aggrieved thereby, the applicant has filed the present application.

3. Learned Advocate for the applicant submitted that the complaint for dishonored of cheque is pending before the competent Court wherein issue of legally recoverable liability of the applicant No.1 will be adjudicated. The private complaint bearing R.C.C. No.49 of 2019 has been unconditionally withdrawn which has been contained similar allegations to the present complaint. Another case for offence under Section 138 of the Negotiable Instruments Act, 1881, involving amount of Rs.1 lakh. Therefore, according to him custodial interrogation of the applicant is not necessary.

4. The Advocate appointed to represent the informant submits that there was no litigation pending on the date of acceptance of the amount. On the date of acceptance of the amount the applicant No.1 had no intention to repay the amount, dishonest intention at the inception borne from material on record. From the material on record, prima facie ingredients of the offence alleged is made out. He, therefore, submitted that considering the nature and gravity of offence the application deserves to be dismissed.

5. Learned APP submits that custodial interrogation of the

applicant is necessary for recovery of amount.

6. Having perused the case diary and the material on record produced by the parties, it appears that amount of Rs.28,55,000/- is the subject matter of issue between the parties. According to informant, on the day of transaction the applicant has no intention to repay the amount. However, according to the applicants, the question as to whether amount of Rs.28,55,000/- is legally recoverable or not is the issue pending before the competent Court in the proceeding initiated by the informant. Unless the competent Court in the proceeding under Section 138 of the Negotiable Instruments Act, 1881, adjudicates on the aspect of illegally recoverable liability, it would not be proper in the facts of the case to adjudicate about recoverability of the amount. At this stage, therefore, the applicant had dishonest intention at the inception of transaction or not is the matter of investigation which investigating agency needs to investigate in accordance with law. However, in view of peculiar facts of the case namely transaction having spread from 2013 to 2015; withdrawal of private complaint containing similar allegations as that of F.I.R.; pending of complaint under Section Negotiable Instruments Act, 1881 involving same amount, in my opinion, the custodial interrogation of the applicant is not necessary. Hence, following order:

a) In the event of arrest in connection with C.R. No.13 of 2023 registered with Khopoli police station, Raigad for the offences punishable under Sections 406, 417, 420 r/w 34 of IPC, the applicants shall be released on bail on furnishing P.R. bond of Rs.1,00,000/- each, along with one or two sureties in the like

amount.

**b)** The applicants shall remain present before the concerned police station on 19<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup> June, 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.

**c)** The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

**d)** The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

**e)** The applicants shall, at the time of execution of the bond, furnish their address and mobile number to the investigating officer, and the Court concerned, and shall not change the residence till the final disposal of the case.

**7.** The Anticipatory Bail Application stands disposed of.

**(AMIT BORKAR, J.)**