

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

ANTICIPATORY BAIL APPLICATION NO. 1545 OF 2023

Mahesh Kumar Purnashankar Sharma ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Omprakash Dubey - Advocate for the Applicant

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

CORAM : S. M. MODAK, J.

DATE : 10th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.

2. Even though the F.I.R. is filed by Lavi Albert Fergos, there is grievance by one Mohan Patil also in the complaint. This first informant-Fergos and the witness-Mohan Patil have paid various amounts to the Applicant. It is on account of purchasing of paneer plant machine. The first informant-Lavi Fergos has paid Rs. 3,50,000/- by way of cheque on 10/09/2018 and further paid Rs. 8,50,000/- by another cheque. The Applicant assured that within a short period the delivery of the paneer plant machine will be given. On inquiry, the manufacturer of the machine told that they have

received only Rs. 3,50,000/- and unless and until entire amount is paid, delivery cannot be given. When asked the Applicant told that he will return the amount in installments.

3. Whereas witness Mohan Patil has paid in all Rs. 17,00,000/-. Rs. 16,00,000/- were paid by cheque. The said Patil was also not handed over the machine, he was also not returned the amount that is why the complaint is filed with Vasai Police Station on 12/12/2022 under Section 420 of the Indian Penal Code.

4. There is a contention of the Applicant is that certain payment were made directly to the manufacturer of the Paneer Machine.

5. Learned APP has shown me letter dated 11/08/2023 addressed to the ASI Vasai Police Station by the manufacturer wherein he has admitted receipt of Rs. 3,00,000/-. Even they have started manufacturing the machine and they have prepared the boiler. As remaining amount is not paid, they could not complete the work and it seems that by way of settlement they have only handed over the boiler.

6. So far as witness Mohan Patil is concerned, learned Advocate for the Applicant contends that he admits receipt of not the entire amount but only amount for which there is statement of the

Vasai Vikas Sahakari Bank Limited. It is annexed which mentions about payment of certain amounts. Mohan Patil-witness is present in the Court.

7. Learned APP insisted that let this applicant to file an undertaking that he will return the amount to witness Mohan Patil. Learned Advocate for the Applicant is ready to file an undertaking not for the entire amount but for the amount which is accepted by his client.

8. I think it is difficult for this Court to verify all these facts, as to how much amount is received and not received and Criminal Court is not expected to work for recovery of the amount. So no solution can be found out. Even though the Applicant has shown readiness to return the amount, it is difficult for this Court to verify the exact amount paid by the witness and received by the accused.

9. So I do not think that any relief can be granted to this Applicant. So application is dismissed. No case for grant of pre arrest bail is made out.

10 These are my prima-facie observations.

[S. M. MODAK, J.]