

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

BAIL APPLICATION NO. 2221 OF 2022

Mayank Amitabh Maitreya

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Varun J. Goswami - Advocate for the Applicant/accused no. 1

Mr. Neha Desale – Advocate for the Complainant

Mr. S. R. Agarkar - APP for the Respondent/State

S. D. Marode – API Vashi Police Station

CORAM : S. M. MODAK, J.

DATE : 28th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned Advocate for the first informant and learned APP
2. Vashi Police Station have charge-sheeted in all three accused persons. Out of them, the present Applicant is one of them. Apart from the first informant-Ulhas Nakhate, there is one more victim by name Nadeem. Both of them have sold various hardware of the computers to company by name AAPAI Technologies Limited. The present Applicant is one of the Director. The first informant realized that after goods are delivered, the accused used to raise a

flimsy ground pertaining to defective packing, variance in the prices of the box and in the challans and so on. There is also practice of issuing cheques and present Applicant used to sign on those cheques as Amitabh Maitreya. This was purposefully done so that cheque will be dishonoured for not tallying the signature. Even the *modus-operandi* consists of issuing legal notice by the Company to their suppliers. Even the present first informant also received a notice on 05/05/2021, at page no. 109 of the charge-sheet. The contention raised by the first informant is that if goods are defective the accused persons were liable to return them. But the accused used neither to pay the amount of the products nor used to return them. That is why complaint is lodged with Vashi Police Station and it was registered under Sections 420 and 406 read with 34 of the Indian Penal Code.

3. Other two accused persons by name Ravikant and Amitabh were granted bail. Contention of the learned Advocate for the Applicant is that offence of forgery is not disclosed. Because in order to show that the Applicant has signed as Amitabh Maitreya, there are no documents. However plea is that notice under Section 41-A of the Criminal Procedure Code is not issued and as such Applicant is entitled for bail as observed in case of **Satender Kumar**

*Antil Vs. Central Bureau of Investigation*¹. Furthermore, observations in case of *Arnesh Kumar Vs. State of Bihar and Another*² also relied upon.

4. Further contention is that there is difference in between breach of the contract and the offence of the cheating. For the offence of the cheating there has to be dishonest intention since beginning. Reliance is placed in case of *Anil Mahajan Vs. Bhore Industries Ltd. and Another*³. Similarly there is reliance on observation in case of *Sahadev Prasad Agarwal and Another Vs. State of West Bengal and Another*⁴.

5. Whereas learned APP and learned Advocate for the first informant invited my attention to the following documents:-

- a) The averment in the F.I.R. and statement of another victim by name Nadeem.
- b) There are e-mail sent by the Applicant which show the dishonest intention since beginning not to pay the amount but only to raise flimsy ground.
- c) There is statement of the employee from the Applicant's Company by name Swati Pawar. She has categorically said about the conduct of these accused

1 (2022) 10 SCC 51

2 (2014) 8 SCC 273

3 (2005) 10 SCC 228

4 2021 SCC Online Cal 2177

persons while dealing with business transaction and the habit of the present Applicant in signing on cheques as Amitabh Maitreya.

- d) Legal notice issued on behalf of the company thereby raising flimsy objections and on the other hand not returning the goods.
- e) Reliance is also placed on few of the other offences registered against him and in one offence the Applicant alongwith another accused were convicted by the Court of JMFC, Belapur on 22/02/2023.
- f). F.I.R. is registered at Pantnagar Police Station, Mumbai under Section 420 read with 34 of the Indian Penal Code.
- f) There are notices issued to the present Applicant and Amitabh Maitreya under Section 41-A of the Criminal Procedure Code dated 15/09/2021, 10/09/2021 and finally email notice.

6. Learned APP submitted that the Applicant was arrested when he was under arrest in an offence registered with Vashi Police Station and charge is already framed, if he is released on bail there are less chances that he will attend the trial.

7. After hearing the respective counsel and going through

the documents, I am not impressed by the argument that the provision of the forgery is not applicable. If employee working in the Company says about the habit of the present Applicant in signing in the name of the another director, I think that prima-facie, it is sufficient. Whether to obtain the handwriting opinion or not that is prerogative of the investigating agency. Whether statement of the employee is sufficient to prove the offence or not that is different issue.

8. I am also not impressed by the arguments that notice under Section 41-A is not issued. There are correspondence which are brought to my notice. So the observations in case of *Arnesh Kumar (supra)* and *Satender Kumar Antil (supra)* will not be useful to the Applicant.

9. I am impressed only by one ground that the Applicant is behind bar since 19/10/2021. Charge-sheet is already filed. We do not know when the trial will take place. So, I find no reason to continue his detention any more.

10. If the previous antecedents are there, he can be asked to furnish heavy surety. We cannot deny him bail on that ground. In view of that following order is passed:-

ORDER

- (i) Bail application is allowed.
- (ii) Applicant-Mayank Amitabh Maitreya arrested in connection with C.R. No. 297 of 2021 registered with Vashi Police Station for the offence punishable under Sections 420, 406 read with 34 of the Indian Penal Code, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 50,000/-.
- (iii) Applicant is directed to give attendance to Vashi Police Station on first Monday of every month from 10.00 a.m. to 12.00 noon for one year.
- (iv) Applicant shall not threaten the prosecution witnesses.
- (v) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after notice.

11. It is made clear that the these are my prima facie observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

12. Application is disposed of in the aforesaid terms.

13. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]