IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2037 OF 2023
WITH
INTERIM APPLICATION NO.2641 OF 2023

Parag Pankaj Thakker and Others ...Applicants

Vs.

The State of Maharashtra and Others ...Respondents

Mr. Saurabh D. Butala with Mr. Siddhesh Bane, for Applicants.
Mr. S. H. Yadav, APP for State.
Mr. Pankaj Pandey with Mr. Smit N., for Intervenor.
Mr. Raju Sonawane, PI, EOW, Thane, Present.

CORAM:- N. J. JAMADAR, J.
DATED:- 4th NOVEMBER , 2023

ORDER:-

1) Heard the learned counsel for the applicants and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 7 of 2023, registered with Wagle Estate

Police Station, Thane, for the offences punishable under Sections 406, 409 and 420 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The applicant Nos. 1 and 2 are the Director and Manager respectively of Indo Pacific Global Services, Thane. The first informant deals in the business of online money transfer and gift cards.

4) The applicants represented to the first informant that they have a number of entities, which deal in money transfer and gift card business. They have a big turnover. The applicants represented that they would provide more margin money than other companies, which were engaged in the said business. Believing the representations of the applicants, the first informant claimed to have transferred during the period 6th September, 2022 to 26th September, 2022 an amount of Rs.9,36,74,000/-, to the accounts of the Indo Pacific Global Services. The latter rendered services of money transfer and gift card to the tune of Rs.2,70,00,000/- only.

5) Upon being confronted the applicant No. -1 – Parag, made a representation that till the time, the said amount or stock in lieu thereof, was not paid, the applicant No. 1 would pay 5 to 6 percent profit per month to merchants and customers. As the applicants did not honour the said commitment as well, the first informant visited the applicants office only to find that nobody was present thereat. Further enquiry revealed that the applicants and co-accused Mamta Yadav and Santosh Shetty, who were also the Directors of Indo Pacific had duped many a persons.

6) When the application was listed before the Court on 26th July, 2023, this Court noted that the applicants had filed affidavits before the Court of Session assuring to pay Rs.2,19,00,000/- to the first informant by 31st October, 2023 in six installments. However, first two cheques drawn for Rs.85,00,000/- were dishonoured. The applicant No. 1 – Parag volunteered to file an undertaking to deposit the said amount of Rs.2,19,00,000/-. On the basis of the said undertaking, the interim protection was granted.

7) Evidently, the applicants did not comply with the said undertaking. Thus, by an order dated 12th October, 2023, interim protection came to be vacated.

8) Mr. Butala, the learned Counsel for the applicants submitted that the applicant could not comply with the undertaking dated 6th July, 2023 on account of the compelling circumstances. However, the applicants are willing to file fresh undertaking to pay the said amount.

9) The learned APP and the learned Counsel for the first informant oppose such indulgence to the applicants as the applicants failed to comply with the undertaking on an affidavit filed not only before the Court of Session but before this Court as well.

10) In view of the development in law especially with the decision of the Supreme Court in the case of **Ramesh Kumar Vs. State of NCT of Delhi**[1], the said course suggested by Mr. Butala does not appear to be in consonance with the law. In any event, the applicant No. 1 has failed to honour the commitments made to the Court on an affidavit time and again. The matter was thus heard on merits.

11) Mr. Butala submitted that the allegations in the FIR indicate that it was a purely civil dispute between the parties. At best, the applicants can be said to have committed a breach of contract. Since out of the amount of Rs.9,36,74,000/- the applicants have admittedly rendered services to the tune of Rs.2,70,00,000/-, it can not be said that the intention of the

1 (2023) 7 SCC 461

applicants was dishonest since the inception of the transaction. No offence of cheating, according to Mr. Butala, can therefore be said to have been prima facie made out. Reliance was placed on the decision of the Supreme Court in the case of **Vijay Kumar Ghai and Others Vs. State of West Bengal and Others**[2], wherein it was, *inter alia*, enunciated that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. The distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating.

12) The learned APP and the learned Counsel for the first informant resisted the application for pre-arrest bail. It was submitted that material on record indicates that the applicants resorted to the *modus operandi* of inducing unsuspecting persons to enter into transactions initially providing some service/consideration and latter on drfrauding them. Such continuous course of defrauding the persons, with whom the applicants enter into the transactions, cannot be played down on the premise that the dispute is of purely civil nature.

2 (2022) 7 SCC 124

13) The aforesaid submissions are based on the premise that the applicant No. 1 – Pankaj Thakkar has been repetitively prosecuted for the offences of criminal conspiracy, criminal breach of trust and cheating arising out of various transactions, he had entered into. CR No.105 of 2019 has been registered against the applicant No. 1 for the offences punishable under Sections 120B, 406, 409 and 420 of the Penal Code. Likewise, CR No. 17 of 2021 has been registered against the applicant No. 1 for the offences punishable under Section 409, 420, 120 read with Section 34 of the Penal Code and the offences under Real Estate Regulatory Authority Act (RERA). Recently, CR No.63 of 2023 has been registered at Special Cell, Delhi for the offences punishable under Sections 120B, 406 and 420 of the Penal Code. Likewise, Vajid Ali Sayyed has lodged an FIR, being CR No.28 of 2023, for the offences punishable under Sections 406, 409 and 420 read with Section 34 of the Penal Code. CR No. 701 of 2023 has been registered against the applicant No. 1 on 31st August, 2023 for the offences punishable under Section 406 and 420 read with Section 34 of the Penal Code. Copies of the charge-sheet and the FIR, in the above number crimes, are pressed into service.

14) Mr. Butala attempted to salvage the position by canvassing a submission that in most of the above cases, the applicants have resolved the disputes with the first informants therein.

15) Undoubtedly, there is distinction between mere breach of contract and the offence of cheating. A mere failure to perform the promise may not satisfy the ingredients of the offence of cheating. On the contrary, if the intention of the person was dishonest since the inception of the transaction, an offence of cheating can be said to have been made out, even though in the same set of facts, the person aggrieved would have civil remedies. It is not an immutable rule of law that there can be no cheating in the commercial transactions. In fact, serious offences of cheating have been noticed in outwardly commercial transactions.

16) In the case at hand, in view of the decision of the Supreme Court in the case of **Ramesh Kumar** (supra), the fact that the applicant failed to comply with the undertaking in itself may not dis-entitle the applicants from claiming the relief of pre-arrest bail. However, the Court cannot lose sight of the fact that where an accused gives a solemn undertaking to the Court and makes the Court believe that the undertaking would be complied with and on the strength thereof obtains an interim order, the subsequent somersault entails serious prejudice to the interest of effective investigation. Significant time lapses. In the intervening period, the investigation progresses while the accused remains protected. To permit an accused to take advantage on account of the progress in the investigation, in the intervening period, would amount to putting a premium on disingenuity.

17) In the case at hand, apparently, the dispute arose in the course of commercial transactions. However, the continuous course of entering into transactions, making persons believe in the promises by initial performance and, thereafter, reneging from those promises cannot be totally ignored. If it is shown that a person has resorted to deception by inducing persons to enter into transactions masquerading as legitimate transactions, continuously over a period of time, an element of dishonesty at the inception of the transaction can be legitimately inferred. A party may commit a breach of contract, or successive breaches of contract with same person or multiple entities. However, a continual course of deception, is a matter which falls in the realm of criminal investigation. It is in this context, the antecedents of the applicants dissuade the Court from acceding to the submission on behalf of the applicants that the dispute is of purely civil nature.

18) For the foregoing reasons, I am persuaded to hold that the applicants do not deserve the relief of pre-arrest bail. Custodial interrogation is warranted to unearth the fraud in all its facets, to identify the beneficiaries thereof and also the persons privy thereto.

19) Hence, the following order:-

ORDER

I) The application stands rejected.

II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

III) In view of disposal of ABA, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]