2023:BHC-AS:29377

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2179 OF 2023

Dr. Umesh Krushnaji Joshi	...	Applicant
versus		
State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.2851 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2719 OF 2023

Dr. Umesh Krushnaji Joshi	...	Applicant
versus		
State of Maharashtra	...	Respondent
and		
Dry Dock Trading LLC	...	Applicant

Mr. Ahmad Mulani, for Applicant.
Smt. Ashwini A. Takalkar APP for State.
Ms. Kirti Dabir i/by RMP Legal, for Intervener.
Mr. Kulkarni, PSI, Crime Branch, Pune City present.

CORAM: N.J.JAMADAR, J.

DATE : 3 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with C.R.No.176 of 2023 registered with Khadak Police Station, Pune, for the offences punishable under Sections 406 and 420 of the IPC.

3. The indictment against the applicant is that the applicant induced the first informant to part with a sum of Rs.1,38,84,826/- by way of advance towards

supply of 5,400 ton sugar. The applicant committed default in the supply of the commodity resulting in the cancellation of the deal of the first informant with a third party and wrongful loss to the first informant. The applicant did not return the said advance even after the order was cancelled by the first informant on 1 May 2022. The first informant thus realized that the applicant had dishonestly cheated the first informant.

4. When the matter was listed before this Court on 29 August 2023, the learned Counsel for the Applicant, on instructions, had submitted that the applicant was still willing to deposit the advance which was parted with by the first informant.

5. In view of the aforesaid statement and the willingness shown by the applicant to deposit the said amount, this Court was persuaded to protect the liberty of the applicant by way of ad-interim relief.

6. The applicant had undertaken to deposit the amount of Rs.1,38,84,826/- within a period of one month.

7. Today, the learned Counsel for the applicant submits that the applicant could not deposit the amount, as undertaken.

8. At the outset, it is necessary to note that the applicant had voluntarily made the statement showing willingness to deposit the amount which was indisputably credited to the account of the applicant. Nonetheless, the non-deposit of the said amount, as undertaken, cannot be arrayed against the accused so as to deny the relief

of pre-arrest bail. The Court, therefore, proceeded to hear the application on merits.

9. An endeavour was made by the learned Counsel for the Applicant that the first informant had only paid the advance and since the balance amount was not paid, the applicant could not secure and deliver the sugar, as promised. It was submitted that the applicant had, in turn, placed an offer letter with Sai priya Sugar Limited to purchase the sugar and had also obtained confirmation from Nirani Sugar Limited. It was further submitted that as the goods were tried to be supplied to Pakistan and not Afghanistan as earlier represented, the goods could not be supplied.

10. As against this, the learned APP would urge that the applicant has been habitually deceiving persons by luring them to enter into transactions. Attention of the Court was invited to the statements of two of the witnesses who have stated about having been cheated by the applicant.

11. It is imperative to note that after the transaction fell through for non-payment of balance consideration, as alleged by the applicant, it would have been evidenced by the correspondence emanating from the applicant. It does not appear that the applicant had demanded the balance payment. On the contrary, in the communication addressed on 30 May 2022, the liability to remit back 10% advance was acknowledged. It is also not the case that 10% advance was transferred by the applicant to Sugar Mills from whom Sugar was to be purchased. Prima facie, it appears that the said amount has been diverted to other persons/entitles.

12. It is true that there is a distinction between cheating, which involves dishonest intention since inception of the transaction and the failure on the part of a person to perform the promise. The attendant circumstances, however, throw light on the intent of the party in default. In the case at hand, the concomitant circumstances indicate that the intention of the applicant was dishonest since the inception of the transaction. The amount received from the purchaser was not transferred to the supplier. Nor a demand for balance price of the goods was made. Nor there is material to show that the applicant took earnest steps to secure the supply of goods. Having acknowledged the liability to refund the amount, the applicant has not repaid the said amount.

13. The custodial interrogation of the applicant seems to be warranted to unearth the fraud in all its facets and identify the entities / persons to whom the said amount has been transferred and have the money trail and, if possible, recover the said amount. Indeed, there are statements of the witnesses which show that the applicant had allegedly donned the role of a conman. Even if those statements are not give much weight, at this stage, yet they indicate, in the least, the *modus operandi* of deceiving persons by entering into apparently legitimate transactions. It is true the offence entails punishment which may extend to 7 years. However, having regard to the quantum of the amount defrauded and the *modus operandi*, the applicant does not deserve the exercise of discretion. The application, therefore, deserves to be rejected.

14. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) Ad-interim order stands vacated.

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

(iv) The Interim Application also stands disposed.

(N.J.JAMADAR, J.)