IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3073 OF 2023

Kamta Haridas Soni ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Rajendra Rathod with S. Ahmed, for Applicant.

Mr. M. G. Patil, APP for State.

CORAM:- N. J. JAMADAR, J.

DATED:- 1st NOVEMBER , 2023

ORDER:-

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

2) This application is preferred for pre-arrest bail in connection with C.R. No.287 of 2022, registered with Kamothe Police Station, Navi Mumbai, for the offences punishable under Sections 406 and 420 of Indian Penal Code, 1860 ("the Penal Code").

3) The applicant runs a Jewellery shop under the name and style of "Soni Gold Ltd Jewellery" at Kamothe. In the year 2019, Shiddhesh Kadam had introduced the first informant to the applicant. The applicant allegedly induced the first informant to part with the amount by making a representation that the applicant would get gold of the value of the amount and interest at the rate of 5% per month for a period of 10 months on the said amount. Initially a sum of Rs.18,70,000/- was credited through banking channels. Subsequently, an amount of Rs.18,70,000/- was paid in cash. The applicant did not deliver the gold as promised. After the first informant realised that he was deceived, the first informant insisted on repayment of the amount and thereupon only a sum of Rs.3,40,000/-was returned. Hence the report.

4) The learned Counsel for the applicant submitted that the first informant had credited an amount of Rs.18,70,000/- only. The cash amount of Rs.18,00,000/- as alleged was never paid by the applicant. In fact, the applicant had returned substantial amount to the first informant. In any event, the dispute is of a civil nature and the custodial interrogation of the applicant is not warranted.

5) I have perused the allegations in the FIR and the material on record. Prima facie, it appears that the first informant was induced to part with the amount by making a promise of delivering the gold and also paying interest on the amount of the purchase price of the gold. The credit of the amount of Rs.18,70,000/- has not been disputed.

6) In normal circumstances, the submission on behalf of the applicant that the dispute appears to be of a civil nature and mere failure to deliver the goods as promised despite receipt of the price thereof may not amount to cheating, unless the intention of the applicant was dishonest since the inception of the transaction, would have merited acceptance. However, there is a disturbing feature which disentitles the applicant from the relief of the pre-arrest bail.

7) The learned Additional Sessions Judge has recorded in the order dated 10th October, 2023 that the applicant made an endeavour to misguide the Court by tendering before the Court, the invoices, which appeared to be forged. GST number mentioned in those invoices was already cancelled before the date of issue of invoices.

8) Before this Court also, the learned Counsel for the applicant initially did not submit that the applicant had sold and delivered the gold for the sum of Rs.18,70,000/-, which was the amount credited through banking channels. Only a dispute was sought to be raised about the amount which was allegedly repaid by the applicant. When the learned APP pointed out the aspect of the alleged forgery of invoices, the learned Counsel for the applicant submitted that it was the stand of the applicant that he had sold and delivered the gold and also repaid the amount. Prima facie, the stand of the applicant appears to be inconsistent, in the least.

9) In any event, since the applicant has allegedly produced false documents to obtain a favourable order from the Court of Session, the applicant is not entitled to discretionary relief.

10) 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.

[N. J. JAMADAR, J.]