



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3323 OF 2023**

Dipesh Hashmukhray Shah

... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Kapil Dave, for Applicant.

Ms. Anamika Malhotra, APP for State.

Mr. Darade, API, Borivali Police Station, present.

CORAM: N.J. JAMADAR, J.

DATE : 30 NOVEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with MECR No.16 of 2020 registered with Borivali Police Station for the offences punishable under Sections 405 and 420 of the Indian Penal Code.
3. The first informant claimed to have placed an order for supply of 23.5 MT TMT steel with the applicant. A sum of Rs.12,25,000/- was paid towards the price of the goods to be sold and delivered. The applicant did not deliver the goods despite receipt of the price and thereby deceived the first informant.
4. Learned Counsel for the Applicant submitted that the applicant is not disputing receipt of Rs.12,25,000/-. However, the said payment was appropriated by the applicant towards the amount which the first informant's company owed to the

applicant in respect of previous transactions.

5. Prima facie, it appears that it is a case of failure to perform the promise to deliver the goods. Whether the intention of the applicant was dishonest since the inception of the transaction so as to constitute the offence of cheating, would be a matter for adjudication at the trial. Nonetheless, the learned Counsel for the Applicant submits, without prejudice to the rights and contentions, the applicant has made a statement before the Investigating Officer that the applicant was willing to deposit the sum of Rs.12,25,000/- in the Court.

6. In the aforesaid view of the matter, I am inclined to exercise discretion in favour of the applicant.

7. Hence, the following order :

ORDER

(i) As undertaken, the applicant shall deposit a sum of Rs.12,25,000/- in the Court of Metropolitan Magistrate, Borivali, within a period of four weeks from today.

(ii) Subject to the aforesaid deposit, in the event of the arrest of the applicant - Dipesh Hashmukhray Shah in connection with MERC No.16 of 2020 registered with Borivali Police Station, the Applicant be released on bail on furnishing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(iii) The Applicant shall co-operate with the investigation and report

to Borivali Police Station as and when directed.

(iv) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the prosecution witnesses or any of the persons acquainted with the facts of the case.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) In the event the amount is deposited by the applicant, the learned Metropolitan Magistrate, Borivali, shall invest the same in an interest bearing account and the said amount shall abide the final decision in the proceedings arising out of MECR No.16 of 2020.

(vii) The application stands disposed.

(N.J.JAMADAR, J.)