

Santosh

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

ANTICIPATORY BAIL APPLICATION NO. 3497 OF 2023

SANTOSH
SUBHASH
KULKARNI

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KULKARNI
Date: 2023.12.18
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Shamit Shashikant Bamb ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Abhishek Salian, a/w Pratik Gawde, i/b Shubham
Mhatre, for the Applicant.

Ms. Anamika Malhotra, APP for the State/Respondent.

Mr. Akhil Kupade, for the Complainant.

PI Swapnali Shinde, Marketyard Police Station, Pune,
present.

CORAM: N. J. JAMADAR, J.

DATED: 15th DECEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the
learned APP for the State.

2. This is an application for pre-arrest bail in connection
with CR No.141 of 2023, registered with Market Yard Police
Station, Pune City, for the offences punishable under
Sections 406, 409 and 420 of Indian Penal Code, 1860 ("the
Penal Code").

3. Mr. Kupade, the learned Counsel, submits that he has
instructions to appear on behalf of the first informant.

4. The gravamen of the indictment against the applicant is that the applicant had purchased goods worth of Rs.46,07,67,056/- during the period 8th October, 2020 to 27th October, 2021 and paid price to the tune of Rs.41,35,61,478/-. The applicant committed default in payment of balance amount of Rs.4,72,05,578/-.

5. Evidently, the genesis of the alleged offence is in the purely commercial transaction of sale and delivery of the goods. Almost 90% of the price of the goods which the applicant has purchased seems to have been paid. The transaction between the parties were during the period 8th October, 2020 to 27th October, 2021. In the circumstances, the question as to whether an offence punishable under Section 420 of the Penal Code can be said to have been *prima facie* made out appears to be debatable. In the backdrop of the long duration of the transactions and payment of almost 90% of the price of the good sold and during the said period, it would be difficult to attribute dishonest intention to the applicant since the inception of the transaction. Thus, a *prima facie* case is made out.

6. I am, therefore, inclined to exercise the discretion in favour of the applicant.

7. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.141 of 2023, registered with Market Yard Police Station, Pune City, 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.
- (ii) The applicant shall cooperate with the investigation and attend Market Yard Police Station on 27th and 28th December, 2023 in between 10.00 am. to 1.00 pm. and, thereafter, as and when directed by the Investigating Officer.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (iv) The applicant shall regularly attend the proceedings before the jurisdictional court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]