IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.133/2023
Gopal Krishna Banka Son of Late Sukhdeo Lal Banka and ors
..vs..
State of Maharashtra, thr.PS Bajaj Nagar, Nagpur/Economic Offence Wing, Civil Lines, Nagpur

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Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

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Shri S.V.Manohar, Senior Counsel with Shri R.V.Malviya, Advocate for Applicants.
Shri S.P.Dharmadhikari, Senior Counsel with Shri Amit Prasad and R.R.Tiwari, Advocates for the Complainant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 24/07/2023
PRONOUNCED ON : 31/07/2023

1. By this application, applicants seek anticipatory bail since they apprehend their arrest in connection with Crime No.16/2023 registered with the non-applicant police station for offences punishable under Sections 403, 406, 409, 417, 420, and 120-B read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by one Ashutosh Natwar Mundada. It is alleged that from 12.11.2016 to 2.12.2016 amount Rs.4,31,50,000/- has been disbursed to the applicants for purchasing Gold.

However, no gold has been received by him. On the basis of the said report, the crime is registered.

3. As per contentions of the applicants, they are businessmen and they run their business at Kolkata, West Bengal.

4. The applicant No.1 has received a summon on 25.6.2020 by which he was called by the Bajaj Nagar Police Station, Nagpur for enquiry purpose. He replied the said summon dated 3.7.2020 informing that due to the Covid-2019 Pandemic Situation, he is unable to remain present physically. However, he explained that physical delivery of the gold has been made to proprietorship concerns of the complainant against proper tax invoices.

The applicant No.1, again, received a summon on 20.7.2020 and he replied the same informing that preliminary enquiry was not conducted in accordance with law. He further informed that in view of the amount received, physical delivery of the gold has been made to the complainant. He has also forwarded relevant Tax Invoices, VAT Returns, and Bank statements to substantiate his claim.

Thereafter also, applicant No.1 received a summons on 16.8.2020 from the Bajaj Nagar Police Station and, therefore, he made a written representation before the Deputy Commissioner of Police and made his grievances.

Recently, on 18.2.2023, he received a notice under Section 41-A of the Code of Criminal Procedure and, therefore, he is apprehending his arrest at the hands of the police and he approached this court for grant of bail.

5. The application is strongly opposed by the State on the ground that though the applicants accepted the amount, they have not delivered the gold to the complainant. On the contrary, they have fabricated the delivery endorsement by way of preparing rubber stamp and, therefore, custodial interrogation of the applicants is required. As such, the application deserves to be rejected.

6. Heard learned Senior Counsel Shri S.V.Manohar for the applicants, learned Senior Counsel Shri S.P.Dharmadhikari for the complainant, and learned Additional Public Prosecutor Shri M.J.Khan for the State.

7. Learned Senior Counsel Shri S.V.Manohar for the applicants, submitted that the complaint against the applicants is lodged after three and half years. There was no previous

complaint against them. The gold was delivered to the complainant against which they have paid all taxes. There is no allegation of fabrication of documents by them in the FIR. Immediately, they have explained regarding the transaction to the police. However, only to harass them, the police are issuing them summons repeatedly. Their physical custody is not required. As such, they be protected by granting them anticipatory bail.

8. Learned Additional Public Prosecutor Shri M.J.Khan for the State, reiterated the contentions and submitted that the custodial interrogation of the applicants is required as they have fabricated the documents.

9. Learned Senior Counsel Shri S.P.Dharmadhikari for the complainant, reiterated the contentions and submitted that the contents of the application under Section 156(3) of the Code of Criminal Procedure show that out of long standing relationship, the complainant has paid the amount. However, only one kilogram of gold was delivered to the complainant and rest of the gold is shown to be delivered. However, the same has yet not been delivered. The physical custody of the applicants is required for investigation purpose.

10. Having heard learned counsel appearing for the parties and perused the investigation papers, it reveals that the crime is registered on the basis of application filed by the under Section 156(3) of the Code of Criminal Procedure. On 25.6.2020, Bajaj Nagar Police Station, Nagpur issued notice to the applicants mentioning that complainant Ashutosh Mundada and his family members run firms viz. M/s.Ankita Enterprises; M/s.Radhadevi Narayandas Holding, M/s.Narayandas Transport. The complainant from his various bank accounts, between 21.11.2016 and 5.12.2016, transferred amount Rs.4,31,50,000/- to the applicants in their companies' bank accounts viz. M/s.Banka Bullions Private Limited and M/s.G.K.Trexim Private Limited. Out of the said amount, the applicants only transferred one kilogram of gold worth of Rs.30,00,000/- and not delivered the gold of remaining amount. The said notice is replied by the applicants replying that the payment was received by the companies in their bank accounts and the physical delivery of gold bars was made to three proprietorship firms i.e. viz. M/s.Ankita Enterprises; M/s.Radhadevi Narayandas Holding, M/s.Narayandas Transport against proper tax invoice between 17.11.2016 and 5.12.2016. It is further contended that three

proprietorship firms have never before disputed the receipt of the gold bars worth of Rs.4,31,50,000/-. The applicants further forwarded the tax invoices to the complainant. The tax invoice dated 22.11.2016 bears the signature on behalf of M/s.Ankita Enterprises' authorized signatory. The tax invoices dated 24.11.2016 and 23.11.2016 also show signature of the authorized signatory of M/s.Ankita Enterprises. This invoice is regard to the delivery of the gold bar. The tax invoices dated 21.11.2016, 18.11.2016, and 17.11.2016 bear the signature of Proprietor of M/s.Narayandas Transport which also shows that the gold bar is delivered. The applicants have further filed on record acknowledgement for electronic filing return in form no.14 which shows that the applicants paid the tax against the said transaction.

11. As per contentions of the complainant are concerned, there is no material that he has not received the said gold. In fact, in the First Information Report, there is no allegation that the applicants have fabricated the documents, i.e. tax invoices. During investigation, various statements are recorded including statement of the complainant. As per the statement of the complainant, there was business transaction between father of the applicant No.1 and his grandfather and

out of the said relationship, he has transferred the amount. Whereas, the recital of the First Information Report shows that he is running the business under the name and style as M/s.Ankita Enterprises; M/s.Radhadevi Narayandas Holding, M/s.Narayandas Transport. In the month of October 2016, he came in the contact with applicant Gopal Krishna Banka and he suggested regarding opportunity by investigating amount by purchasing gold bars and, therefore, he transferred the amount. Thus, as per recital of the First Information Report, initially, the complainant informant not acquainted with the applicants. For the first time, in the year 2016, they got acquainted with each other. As per the allegations, the entire transaction took place on 22.11.2016 and 25.11.2016. It is alleged that by the complainant that regarding the transaction dated 12.11.2016 to 2.12.2016 he has not received the gold. However, after 2.12.2016 also the complainant had continued the transaction with the applicants and no complaint was made regarding the non-delivery of the gold. The present report is also filed in the year 2023 i.e. 9.2.2023. It is contention of the complainant that for receiving the gold he has visited Kolkata on 2-3 occasions and produced on record the flight tickets. As per his allegations, though he contacted the applicants for receiving the gold, the applicants have not responded. As far as the receipts of the gold are concerned, the applicants have placed on record various tax invoices which are signed by the authorized signatory of M/s.Ankita Enterprises and M/s.Narayandas Transport. As per the allegation, the complainant and his family members are persons who are running the said firms. The complainant has not placed on record that these are not signatures of their authorized signatories. At this stage, no *prima facie* material is placed by the Investigating Officer to show involvement of the applicants in the alleged crime.

12. Considering that there is no allegation against the applicants that they have forged the said tax invoices, the contentions of learned Additional Public Prosecutor for the State and learned Senior Counsel for the complainant that the applicants forged the tax invoices and bear signatures of authorized persons of their firms, are not sustainable.

13. Learned Senior Counsel Shri S.V.Manohar for the applicants placed on record the procedure to be adopted while purchasing gold or gold jewellery issued by All India Gem and Jewellery Domestic Council. As per the said procedure,

general practice is that a buyer/customer contacts supplier for buying gold or gold jewellery. Upon agreeing to terms of supplier, client and supplied enter into verbal agreement for purchase and sale of gold/gold jewellery. Th client is required to make advanced payment for the said deal. Upon receiving the payment, the goods are supplied to the client to his authorized representatives (upon confirmation from the client, normally over phone) with a proper tax invoice and the deal/transaction is closed. However, in rare cases where the goods are sent for approval, or in case the rates are gold are not fixed, a delivery note is issued for the easy movement of the goods and the tax invoice is raised upon fixing of rates. This is the standard operating procedure followed by the maximum jewellers in the industry and accepted across the country.

14. At this stage, from the investigation papers, nothing is on record to show that the tax invoices, which bear the signatures of the authorized signatories of the firms run by the complainant, are forged documents; the First Information Report is lodged after a lapse of three and half years and no explanation is put forth for the same, and no *prima facie* case is made out against the applicants. In this

view of the matter, the application of the applicants deserves to be allowed, as per order below:

ORDER

(1) The criminal application is **allowed**.

(2) In the event of arrest of applicants, in connection with Crime No.16/2023 registered with the non-applicant police station for offences punishable under Sections 403, 406, 409, 417, 420, and 120B read with Section 34 of the Indian Penal Code, they be released on bail on they executing P.R.Bonds in the sum of Rs.50,000/- by each of them with one solvent surety of the like amount by each of them.

(3) The applicants shall attend the police station once a fortnight i.e. 1st and 16th day of every month and shall cooperate with the Investigating Officer.

(4) The applicants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(5) The applicants shall furnish their cell phone number(s) and addresses with the address proof. Additionally, they shall furnish names of their two relatives and their addresses with

proofs.

(6) The applicants shall not leave the India without prior permission of the Court.

(7) Breach of any of conditions leads to cancellation of the bail.

Criminal Application stands **disposed** of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!