2024:BHC-AUG:23844

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 199 OF 2024

SANJAY KUMAR SHAHA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. V. S. Khanke, Advocate for the applicant
Mr. C. B. Badane, APP for the respondent/State
Mr. S. R. Zambre, Advocate for the informant

AND

ANTICIPATORY BAIL APPLICATION NO. 201 OF 2024

KALLAM RAM PASWAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. V. S. Khanke, Advocate for the applicant
Mr. C. B. Badane, APP for the respondent/State
Mr. S. R. Zambre, Advocate for the informant

AND

ANTICIPATORY BAIL APPLICATION NO. 202 OF 2024

KARAN SANJAY SHAHA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. V. S. Khanke, Advocate for the applicant
Mr. C. B. Badane, APP for the respondent/State
Mr. S. R. Zambre, Advocate for the informant

CORAM : R. M. JOSHI, J.
DATE : 1st OCTOBER, 2024

PER COURT :-

1. Heard.

2. Applicants apprehend arrest in connection with Crime No.700/2023 registered with Shrigonda Police Station,. Dist. Ahmednagar for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code.

3. The informant is an agriculturist and trader. He claims that in the year 2023 he had sold grapes to the applicants in ABA Nos. 199/2024 and 202/2024 through Kallan Paswan. It is contended that during the period from 15/02/2023 to 03/03/2023 there was supply of grapes to them. The total amount payable to the informant was Rs.50,41,542/- whereas the out of the said amount only Rs.24,00,000/- were paid. It is thus alleged by the informant that this the case wherein he is being cheated by the applicants.

4. Learned counsel for the applicants submits that this is a civil transaction and as such no offence under Sections 406, 420 is not tenable. According to him that with an intention to pressurize applicants to pay money/ recovery money, criminal colour has been given to the transaction in question. He also contended that entire transaction is not with informant but with other persons too. It is his submission that

pursuant to the grant of interim relief applicants have attended the concerned police station and cooperate during the investigation. He also made grievance that in fact the informant never appeared before the Investigating Officer is enable the applicants to show the accounts of the transaction. Thus, it is his contention that this being a civil dispute, it is a fit case for grant of anticipatory bail.

5. Learned APP and learned counsel for the informant opposed the said submissions by contending that from the first information report it is clear that the applicants had intention to cheat the informant since the inception of the transaction. To substantiate the said submissions it is pointed out that against transaction of more than Rs. 50 lakhs only Rs. 24 lakhs are paid and though entire money was not paid by applicants, it was claimed that informant is paid the same. This according to them indicates the malafide intention on the part of the applicants to cheat since beginning of transaction. Apart from this by relying upon the investigation papers it is submitted that there is no substance in the contention of the learned counsel for the applicants that the transactions were entered in to with several persons and not informant alone. To support the said submissions receipts issued towards the sale of the grapes were pointed out.

6. It is not the law that in all cases wherein there is contract between

the parties, no offence can be made out. In case there is element of criminality involved in the transaction, there is no embargo to register a crime in respect of the same. In order to attract offence punishable under Section 420 of IPC there has to be evidence to indicate that since inception the accused had intention to cheat. Herein this case the goods worth of Rs.50,41,542/- were sold by the informant against a sum of Rs.24,00,000/- has been paid. Thus, almost half of the amount was still due and payable to the informant by the applicant. In spite of the said fact the applicants have sent the documents as if the entire amount is paid. This Court, therefore, finds substance in the contention of the learned counsel for the informant that there was an intention to cheat the informant since inception of the transaction. There is further evidence on record in the form of transaction amount of Rs.24,00,000/- by the applicants to the informant which indicates that the transaction between the parties was for the sale of the grapes against which the payment was to be made by bank transfer. This is not the case of the applicants that other than bank transfer any amount was paid by the applicants to the informant. Thus, it can be safely said that the applicants received goods worth Rs.50 lakhs for less than half price.

7. It is not the case, where there are disputes about the receipt of goods or quality thereof, in order to a civil court requiring adjudication

thereon. Similarly, though it is sought to be claimed by applicants that transactions were with others and not only with informant, but the investigation papers do not indicates so. Moreover applicants have not produced any material on record to support such submissions.

8. Once the Court comes to the prima facie conclusion that there is element of criminality involved in the application as there is *prima facie* material to indicate that the offence of cheating is made out, this Court finds substance in the contention of learned APP that custodial interrogation of applicants is necessary to ascertain the manner in which the crime is committed and also for recovery of yields of crime. Hence, there is reason or justification to grant pre-arrest bail. As such, applications stand dismissed.

(R. M. JOSHI, J.)

ssp