

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

ANTICIPATORY BAIL APPLICATION NO. 2360 OF 2024

Yogesh Vinay Badve

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Ritesh Thobde (Through V.C) a/w Ms. Ankita Pramod Rai and Gubi Ansari, for Applicant.
- Mr. Kiran C. Shinde, APP for Respondent.
- Mr. G.V. Ingale, Police Naik, Pandharpur Rural Police Station.

CORAM : MANISH PITALE, J.

DATE : 06th SEPTEMBER, 2024.

P. C. :

1. Heard, Mr. Thobde, learned counsel for the applicant and Mr. Shinde, learned APP for the respondent – State.
2. The applicant has approached this Court as he apprehends arrest in connection with First Information Report No.0241 of 2024 dated 28.06.2024, registered at Police Station Pandharpur Rural, District Solapur, for offence under Section 420 of the Indian Penal Code (IPC).
3. The informant in the present case is the Legal Officer of a company which executed a Procurement Management Agreement with the proprietary concern of the applicant. The said agreement was executed in the year 2021 and under the said agreement, the applicant was to purchase goods and further sell and distribute them to retailers.

4. The various clauses of the agreement specified the mutual obligations of the parties.

5. The informant in his statement, which led to registration of the FIR, raised a grievance that for the period between 22.06.2023 to 31.07.2023, the applicant allegedly clandestinely sold certain goods without retaining bills and illegally retained the proceeds earned from sale of such goods. The amount involved was allegedly ₹ 18,41,866/-. On this basis the offence was registered against the applicant.

6. The learned counsel for the applicant submits that even if the allegations leveled against the applicant are to be taken into consideration, at worst, it would amount to a civil or commercial dispute between the parties. The aforementioned agreement contains a dispute resolution clause, which provides for arbitration and hence, this is a case of seeking to give a civil dispute the colour of criminality. It is further submitted that copies of e-mails placed on record would show that even at the relevant time the applicant had raised doubts about the correctness of the software, which recorded the stock of the goods, but no action was taken by the informant as regards the doubts raised on behalf of the applicant. It is submitted that the applicant had handed over keys of the warehouse in August, 2023 itself when the informant had approached the police and therefore, there is no question of the applicant

having avoided the process of law. On this basis, it is submitted that the application may be allowed.

7. On the other hand, learned APP opposed the present application, submitting that the ingredients of the offence are made out. Huge amount of ₹ 18,41,866/- is involved and the Sessions Court has specifically recorded that when the investigation was undertaken, the applicant did not cooperate and he did not even remain present at the stage of auditing, when the allegation of cheating was leveled against the applicant.

8. This Court has perused the material on record in the light of the rival submissions. The application deserves to be allowed, for the following reasons:

- (i) The nature of the grievance raised in the present case *prima facie* appears to be a civil / commercial dispute between the parties in the light of the Procurement Management Agreement executed in the year 2021.
- (ii) The execution of the agreement in the year 2021 shows that there was an ongoing commercial relationship between the parties. The grievance for the first time was raised by the informant only in August, 2023 and thereafter in June, 2024 pertaining to the aforementioned allegations. It could be said

that a civil / commercial dispute arose between the parties and *prima facie* it is difficult to reach a conclusion at this stage that from the very inception when the aforesaid agreement was executed in the year 2021, the applicant had a dishonest intention to cheat the informant

- (iii) The copies of e-mails pertaining to the relevant period indicate that the applicant had indeed raised doubts about the data pertaining to the stock of items, giving credence to the contention raised on behalf of the applicant that a genuine dispute may have arisen between the parties as regards the stock of goods available at the relevant period of time.
- (iv) The said agreement executed between the parties contains a specific dispute resolution clause, which provides for arbitration. *Prima facie* the dispute being of civil / commercial nature, its resolution could be attempted by triggering the dispute resolution mechanism provided in the said agreement itself.
- (v) The applicant has undertaken to cooperate with the investigation and hence, the application can be allowed.

9. In view of the above, the application is allowed in the following

terms :

- (A) In the event the applicant is arrested in connection with FIR No.0241 of 2024 dated 28.06.2024, registered at Police Station Pandharpur Rural, District Solapur, he shall be released on bail on furnishing P.R. Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall remain present before the Investigating Officer on 09th September, 2024 and 10th September, 2024 between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (D) The applicant shall attend the proceedings before the Trial Court on every date, except when exempted, for reasons to be recorded in writing.

10. Needless to say, violation of any of the aforesaid conditions may lead to cancellation of the present order.

11. It is also clarified that the observations made in this order are

limited to the disposal of the present anticipatory bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)