IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2700 OF 2023

Akkineeswaran Ramasamy ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ritesh Thobde, through VC, a/w Ankita Pramod Rai and Zubi Ansari, for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the State/Respondent No.1.
Mr. Zoheb Shaikh, for the first informant.

CORAM: N. J. JAMADAR, J.
DATED: 9th SEPTEMBER, 2024.

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the first informant.

2. This is an application for pre-arrest bail in connection with CR No.309 of 2023, registered with Jail Road Police Station, Solapur, for the offences punishable under Sections 420, 406 and 506 of the Indian Penal Code, 1860 (“the Penal Code”),

3. The applicant trades in onion. Since the year 2015, the applicant has purchased onions from the first informant. The applicant paid the price of the onions purchased from the first informant during the period 2019-2020.

4. During the period July, 2021 to August, 2021, the applicant allegedly purchased onions worth Rs.46,84,229/-. However, the applicant refused to pay the unpaid price of the goods sold and delivered. When the first informant insisted for payment of the price, the applicant threatened the first informant with dire consequences.

5. On 26th September, 2023, this Court was persuaded to grant interim bail to the applicant opining *inter alia* as under:

> "4. The learned Counsel for the applicant submitted that there have been regular transactions between the applicant and the first informant. In fact, in the month of July 2021, the applicant had paid Rs.24 Lakhs approximately. The applicant has been falsely roped in on account of a dispute arising out of a purely commercial transaction.
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> 5. From the perusal of the allegations in the FIR, it becomes evident that there were regular transactions between the two traders. In view of the facts that the applicant had paid for the goods sold and delivered, in the past, and the first informant claimed that a sum of Rs.46,83,229/- remained outstanding, prima facie, the dishonest intention since the inception of the transaction appears to be absent. It would be a matter for trial as to whether the applicant owes a sum of Rs.46,83,229/-, for which the sale and delivery of the goods would be required to be established.
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> 6. A prima facie case for grant of interim protection is made out. However, since the applicant is based at Coimbatore, I deem it appropriate to direct that the applicant shall appear before the concerned investigating officer on a couple of dates, to facilitate further investigation."

6. Mr. Thobde, the learned Counsel for the applicant, submitted that the applicant had appeared before the Investigating Officer, as directed. The dispute between the parties is of purely civil nature. The allegation of the first informant that an amount of Rs.46,84,229/- is outstanding, is demonstrably incorrect. Attention of the Court was invited to the extract of bank account of the applicant which indicates that in the month of July 2021 a sum in the range of Rs.24,00,000/- has been transferred to the account of the first informant. Therefore, the order of interim bail deserves to be made absolute.

7. Mrs. Ganapathy, the learned APP, resisted the prayer for bail. It was submitted that as the applicant is a resident of Coimbatore, it would be difficult to secure the presence of the applicant at the trial. Moreover, as the applicant has deceived farmers he does not deserve pre-arrest bail.

8. Mr. Shaikh, the learned Counsel for the first informant – respondent No.2, supplemented the submissions of the APP. It was urged that on the basis of the representation made by the applicant, the first informant and his associates had sold and delivered the goods. Default on the part of the applicant forced the first informant and his associates into a vicious cycle of indebtedness. Therefore, if the applicant claims that there was a commercial transaction between the parties, without an element of criminality, the applicant be put to terms as to payment of the due amount, submitted Mr. Shaikh.

9. I have carefully perused the allegations in the FIR. It is specifically alleged that the applicant committed default in payment of the price of the goods sold and delivered in the month of July and August, 2021, with intent to defraud the first informant and his associates. *Prima facie,* there is material in the form of the statement of account of the applicant, maintained with Axis Bank, which indicates that a substantial amount was credited to the account of the first informant's firm in the month of July, 2021. It is necessary to note that Mr. Shaikh fairly stated that at this stage, respondent No.2 may not dispute that, the amount was credited to the account of the firm of respondent No.2. However still there is a substantial outstanding, urged Mr. Shaikh.

10. The aforesaid submission, in a sense, lends heft to the submission of Mr. Thobde that the dispute between the parties is essentially of a civil nature. Since there have been multiple transactions between the applicant and the informant party from the year 2019 – 2020, in the least, and the applicant had allegedly paid the price of the goods sold and delivered in the year 2019 – 2020 and there is further material to indicate that a substantial amount was paid in the month of July, 2021 as well, it appears debatable whether the intention of the applicant was dishonest since the inception of the transaction.

11. What was the quantity of the goods sold and delivered by the informant party to the applicant and what was the quantum of the unpaid price of the goods so sold and delivered, are the matters of evidence and proof at the trial. Thus, the custodial interrogation of the applicant does not seem warranted for an effective investigation. The order of interim bail, therefore, deserves to be made absolute.

12. Hence, the following order:

: O R D E R :

(i) Order of interim bail dated 26th September, 2023 is made absolute on the terms and conditions incorporated therein.

(ii) The applicant shall henceforth appear before the Investigating Officer as and when directed.

(iii) The applicant shall regularly attend the proceedings before the jurisdictional court.

(iv) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]