IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 351 OF 2024

Hardeep Raj Sharma ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Pramod Kathane a/w. Anjaykumar Kori a/w. Manoj Sawardekar i/b. Sushant Ghadage for Applicant.
Ms. Pallavi N. Dabholkar, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 9 FEBRUARY 2024

P.C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R.No.704 of 2023, registered at Mahatma Phule Chowk Police Station, Thane city, on 11.12.2023, under Section 420 of the Indian Penal Code.

2. Heard Mr. Pramod Kathane, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The F.I.R. is lodged by one Riyaj Ahamad Hamid Ali Choudhari. He has stated that, he was in the business of taking

contracts for the demolition of the buildings. During these business activities he came in touch with the present applicant. The applicant told him that the K.D.M.C. has declared one building named Railway Mitra Mandal Co-operative Housing Society, near Joker talkies, as a dilapidated building. The applicant showed a letter sent by the K.D.M.C. to the secretary of that society for depositing the amount for demolition. The applicant represented as if it was a work order issued by the K.D.M.C. The applicant represented that the contract for demolition of that building was given to the applicant. Based on that representation the applicant entered into an agreement with the informant for Rs.20,50,000/-. At that time, the informant paid Rs.5 lakhs to the applicant. The agreement was executed. The subsequent amount was to be paid after the work was started. After that the applicant started avoiding the informant. Subsequently, the informant came to know that the applicant had given that job to somebody else. The informant met the applicant and demanded his money, but the applicant avoided to refund the money. On 27.09.2023 they reached an understanding. The applicant gave him a cheque of

Rs.5 lakhs, but it was dishonoured. Ultimately, the informant lodged his F.I.R.

4. Learned counsel for the applicant submitted that the informant had taken that particular cheque under duress from the applicant with the help of police. At the highest, it would be breach of contract and there would not be any criminal offence. He submitted that the applicant's custodial interrogation is not necessary.

5. Learned APP produced the investigation papers before me. It contains Memorandum of Understanding executed on 21.06.2023 which is signed by the applicant, as well as, the informant. In that agreement, there is clear recital that the applicant had taken Rs.5 lakhs as a token amount on 21.06.2023 itself.

6. I have considered these submissions. The agreement itself mentions that the applicant had accepted Rs.5 lakhs. Therefore, there is no force in the submission that the applicant was forced to enter into some understanding afterwards. The fact

that he had taken Rs.5 lakhs is undisputed. Thereafter, without informing the informant the applicant gave that work to another person. The intention of the applicant is made out from his conduct. The amount taken by him was also not refunded. Therefore, the offence is made out. The gravity of the offence is important. The informant was deprived of his money. The applicant has misappropriated that money.

7. In this view of the matter, the applicant cannot be protected U/s.438 of the Cr.p.c. The application is rejected.

(SARANG V. KOTWAL, J.)