IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1109 OF 2024

Suryakant Landge .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Aabad Ponda, Senior Advocate i/b. Ameya Vombathkere for the Applicant.
Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 23rd APRIL, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.92/2024 registered at L.T. Marg Police Station, Mumbai on 30.1.2024 under Sections 409, 420 read with 34 of IPC.

2. Heard Mr. Aabad Ponda, learned Senior Counsel for the Applicant and Ms. Pallavi Dabholkar, learned APP for the Respondent-State.

3. The FIR is lodged by one Amitkumar Sotani. He has stated that he is the Manager in a company by the name Maan Textile Industries at Kalbadevi. He was looking after the production and supply of the company's goods. The informant's company used to purchase cloth from Ichalkaranji and after processing that cloth they used to store it in their godown at Bhivandi; and from there they were supplying it to the purchasers. They used to sell their processed cloth through the brokers in the cloth market. The informant was knowing one broker by the name Kevin Shah since many years. He used to sell the informant's cloth to others with margin and for those transactions, the informant used to pay commission to Kevin Shah. About six months prior to lodging of the FIR, Kevin Shah introduced the informant to the present Applicant, who was having a Partnership business with one Dhiren by the name Ashapura Enterprises at Chira Bazar, Mumbai. On 2.5.2023, Kevin Shah, Dhiren and the present Applicant had come to the office of the informant. Kevin recommended to the informant to have business transactions

with the Applicant. The informant has further stated that in their business a period of sixty days was given for making payment after the cloth was supplied to the sellers. The Applicant's firm Ashapura Enterprises placed orders with the informant's company between 4.5.2023 to 13.9.2023. The informant's company had sold 10,891 meters of cloth to the Applicant's company worth Rs.14,15,422/-. The informant used to prepare different bills and used to send them to the Applicant's company. During that period, the Applicant had paid him Rs.2,48,412/- and had promised to make the balance payment shortly. The Applicant did not make the payment of that amount. The informant went to the Applicant's shop. He found that it was closed. The Applicant's godown was also shut. He tried to contact the Applicant through his mobile phone number. The Applicant and his partner Dhiren gave evasive and false promises. The informant realized that he was cheated and, therefore, decided to lodge the FIR with the police. The allegations in the FIR are that similar to the informant, the Applicant had cheated seven others and had misappropriated Rs.58,36,385/- . On this basis, the FIR is lodged.

4. Learned Senior Counsel appearing for the Applicant made the following submissions :

i. It was a simple case of business transaction. The cloth was given by the informant and others for selling it further in the market. Therefore, there was no entrustment of the property. Consequently, Section 409 of IPC is not applicable.

ii. It was a clear case of commercial transaction and, therefore, the dispute, at the highest, would be a commercial dispute. Therefore, no offence is made out.

iii. There was no inducement as required under the definition of the offence of cheating. The Applicant had not approached the informant but there was a broker, by the name Kevin Shah, who had brought about this transaction. Therefore, there was no direct or indirect inducement by the Applicant to the informant which had resulted in the informant parting with his goods.

iv. It can never be said that the Applicant had committed this offence or there was an offence of cheating either from the inception or even thereafter.

v. He submitted that the allegations about causing loss to others as mentioned in the FIR are only made to give serious colour to the case of the informant.

vi. Learned Senior Counsel further submitted that more than 50% of the dues of each of these merchants were paid by the Applicant which shows his honest intentions to make payment when the funds were available.

vii. He further submitted that after receiving goods from those suppliers, like the first informant, the Applicant had further sold them to various other parties. They have not made the payment and, therefore, the chain had started causing loss to the Applicant. He submitted that the proper course for the informant and others was to approach the Civil Court for damages.

viii. The investigating machinery and the police cannot be used in this manner to act as recovery agents by taking recourse to criminal proceedings.

5. Learned APP opposed these submissions. She produced the investigation papers before the Court. She submitted that the case of the informant was not an isolated case but there were other seven to eight victims who were similarly cheated by the Applicant. The *modus operandi* of the Applicant was to gain trust by making some payment and getting more goods against that trust and afterwards not making payment of the goods received. The Applicant was aware of his financial crunch and yet during the said period, he went on dealing with other suppliers and did not pay their amounts. All these victims have given their statements which are recorded during investigation. His subsequent conduct shows his intentions right from the inception. Afterwards when he was not in a position to refund the amount or return

the goods, the Applicant went out of reach. He did not communicate with the victims. His shops and godowns were closed. Therefore, nobody could contact him. This clearly shows his criminal intentions. The conduct assumes importance because many people are cheated. The Applicant has not cooperated with the investigation at all.

6. I have considered these submissions. Apart from the first informant, the statements of the other suppliers are also important. Their statements can be briefly referred to. One such victim is Parag Shah. He has stated that he was introduced to the Applicant by Kevin Shah. They started transacting with the Applicant since March, 2023. The Applicant used to place orders and Parag Shah used to supply cloth. Between March, 2023 to September, 2023 he had supplied cloth worth Rs.28,55,819/- under the bills. Out of that the Applicant had paid him Rs.22,54,231/-. He had not paid the balance amount of Rs.6,01,588/-.

7. Vishal Sanghvi was another merchant. He had supplied cloth worth Rs.10,67,787/- between June 2023 to

August 2023. The Applicant had paid only Rs.2,74,756/-. The balance amount of Rs.7,93,031/- was not paid. Kunal Biad had supplied cloth worth Rs.10,90,530/-, but that amount was not paid. Nitin Gada was similarly cheated for the amount of Rs.6,74,762/-. Varun Agrawal has supplied cloth to the tune of Rs.7,91,901/-. The statement of one Ganesh Patil, who was working with the Applicant in September and October 2023, shows that no work was carried out in the office of Ashapura Enterprises. The Applicant was not responding to any phone calls as well.

8. The statement of Kevin Shah is important. He was the broker who had introduced the Applicant to the informant. He has supported the case of the informant and other victims.

9. Thus, from these statements it is quite clear that the business transactions or the losses suffered by the first informant was not an isolated incident. There were other victims. There is a common thread and a common *modus operandi* in which the offence was committed. In all these

matters, the Applicant had not only not paid the money but the history shows that initially he won the trust of those merchants by making payments and subsequently placed order for the cloth worth of much higher value and then he did not make the payment. Though he had made certain part payment but compared to the balance amount, that was much less. In the process, he has caused loss to the suppliers and has got illegal gain for himself to the tune of more than Rs.58 Lakhs.

10. Learned APP rightly submitted that it was the Applicant's *modus operandi* and, therefore, all these suppliers were induced into parting with their goods. They ultimately suffered losses.

11. This cannot be treated merely as a commercial dispute. The intention of the accused can be gathered from his subsequent and repeated conduct. In the present case, his conduct shows that he was cheating many people at the same time and, therefore, at this stage it is difficult to observe that he had no intention to cheat any of these victims.

12. In this view of the matter, it cannot be said that the police have acted as recovery agents or they have wrongly registered the FIR. The matter requires investigation and custodial interrogation of the present Applicant is necessary. In the background of these facts and material collected during the investigation, no case for protection under Section 438 of Cr.P.C. is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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