IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No. 1372 of 2024

1. Vikas Gajanan Sharma
Aged about 33 years, Occ. Business,
R/at. RHN 08, Veer Villa, Near
Galaxy Circle, Pal Road Adajan,
Surat, Gujrat – 395 009.

2. Bablu Kumar
Age 24 years, Occ. Business,
R/at. RHN 08, Veer Villa, Near
Galaxy Circle, Pal Road Adajan,
Surat, Gujrat – 395 009.

3. Rajivkumar Chandrakant Panwala
Aged about 56 years, Occ. Business,
R/at. 1103, Surbhi Apartment,
Near Chandani Chowk, Piplod,
Surat, Gujrat – 395 007. ...Applicants

Vs.

The State of Maharashtra
(At the instance of DB Marg
Police Station,Mumbai) ...Respondent

Ms Surbhi Agrawal i/b. Nishit Chopra, for the Applicants.
Mr Amit A. Palkar, APP for the Respondent – State.
Mr. D. K. Singh, for the Intervenor.

Coram: R. N. Laddha, J.
Date: 9 August 2024

P.C.

Heard Ms Surbhi Agrawal, learned counsel for the applicants and Mr Amit Palkar, learned Additional Public Prosecutor representing the respondent – State.

2. The applicants are apprehending their arrest in C.R. No.206 of 2024 registered at DB Marg Police Station, Mumbai, for the offences punishable under Sections 420, 406 and 409 read with 34 of the Indian Penal Code.

3. The complainant Manish Bhavarlal Jain, who operates a Flour Mill in Opera House, Mumbai, and Kadodara, Surat, Gujrat, alleges that Ravi Shah and Harish Goswami visited his office on 21 September 2023. They claimed to represent Prism Alliances Pvt Ltd, a Company based in Surat city, Gujrat, and placed an order for flour and maida at wholesale rates. Vikas Sharma (applicant No.1), Bablu Kumar (applicant No.2), and Rahul Kumar Chudasama, identified as a Directors of Prism Company, confirmed the order on 25 September 2023. Later, on 26 September 2023, applicant No.1 reiterated the order's validity mentioning that he had received a 100 Crore credit from a Nationalised Bank. Based on this, Jain delivered the flour products to Prism Alliances Gujrat office as per purchase order between 27 September and 4 October, 2023. During this period, applicants No.1 and 2, and a Manager -applicant No.3 engaged in discussions with Jain regarding the product and payment assuring timely settlement.

4. After delivering the flour product worth Rs.53,95,500 - to Prism Alliance, the informant contacted the Company's director to enquire about the payment. Applicant No.2 issued a cheque dated 28.11.2023

for the payment, but it was dishonoured. Subsequently, on 30.11.2023, Prism Alliance transferred Rs.3,95,500- to the informant's account. The informant then asked about the remaining amount of Rs.49,99,999/-. At that time, the director requested more time for payment, however, applicant No.3-Manager avoided communication with the informant. The informant later discovered that Prism Alliance had sold the flour material purchased from them in the market at a lower price, falsely claiming that the informant's company sold it at a higher rate. The informant alleges that applicants, in collusion with Ravi Shah and Harish Goswami, dishonestly gained the informant's trust and cheated him out of Rs.49,99,999/-.

5. Ms Surbhi Agrawal, the learned Counsel for the applicant, submits that the dispute originated from the commercial transactions. The allegations in the FIR suggests a civil nature of the dispute, but they have been intertwined with criminal accusations. According to her, the informant received a cheque totalling Rs.53,95,500/-. Initially, the cheque was dishonoured due to insufficient funds, not account closure. Subsequently, the applicants made partial payment to the informant, indicating no intention to defraud from the outset. The learned Counsel contends a false complaint was lodged solely to recover the outstanding amount owned to the applicants and their company. As a demonstration of their bonafides, the applicants have deposited Rs.5,00,000/-. Furthermore, they are willing to cooperate with the investigation.

6. On the other hand, Mr Amit Palkar, the learned APP, and Mr DK Singh, the learned Counsel for the intervenor/first informant, jointly assert that the applicants intentionally defrauded the informant by embezzling a huge amount. The investigation is ongoing, and two of the co-accused individuals remain at large.

7. Upon perusing the records, it appears that primarily the dispute revolves around civil transactions. The cheque, dated 28 November 2023, encountered dishonour on three occasions : First, on 26 October, 2023, due to insufficient funds; second, a stop payment on 1 December 2023; and finally on 18 February 2024, due to the account being closed. Following the dishonour, the applicants made partial payments to the informant, suggesting no initial intent to defraud. Moreover, the applicants cooperated with the investigation, attended the police station, and were under interim protection. The investigation is almost complete. The transactions occurred between 27 September 2023 and 3 October 2023. However, the FIR was not filed until 6 April 2024, resulting in a significant delay. Additionally, as a demonstration of bonafides, the applicants have deposited Rs.5,00,000/- with the Registry of this Court. The co-accused are yet to be arrested cannot be ground to deny the relief of pre-arrest bail to the applicants. Nevertheless, looking at the fact that a substantial part of the investigation is over and that the applicants were otherwise available to the State, this Court does not find any reason not to secure them with the benefit of bail in anticipation of arrest.

8. Accordingly, the interim order passed by this Court dated 14 May 2024 stands confirmed on the same terms and conditions. The application stands disposed of.

[**R. N. Laddha, J.**]