

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

ANTICIPATORY BAIL APPLICATION NO. 1592 OF 2024

Kishor Popatrao Shende	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Niranjan Mundargi a/w Ms. Keral Mehta i/by Vishal Waghela
for the Applicant.

Mr. Mayur S. Sonavane, APP for Respondent-State.

Mr. Kabugade, API, Khed Police Station, Pune (Rural).

CORAM: MANISH PITALE, J.

DATE : 20th JUNE 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for respondent-State.

2. In the present case, the applicant apprehends arrest in connection with FIR No. 0112 of 2024 dated 14th February 2024 registered at Khed Police Station, Pune (Rural), for the offences under Sections 406 and 420 read with 34 of the Indian Penal Code, 1860 (IPC).

3. The applicant and his father are arraigned as accused in the present case. The statement of the informant leading to the registration of the FIR shows that on various dates, upto December 2022, the informant paid amounts to the accused persons totaling to Rs.29,00,000/-. It is submitted that the

aforesaid amount was paid for purchasing Poclain Machine (Excavating Machine) from the applicant. It is submitted that despite having received the entire consideration and having lured the informant into payment of such a huge amount, the applicant did not handover the said machine, thereby committing the said offences. The FIR was registered on 14th February 2024.

4. The learned counsel for the applicant submits that in the present case, the aforesaid machine was given on rent to the informant for a period between 5th November 2021 to 4th November 2023 i.e. a period of 24 months on monthly rent of Rs.2,25,000/- and the total rent for the entire period, according to the applicant, comes to Rs.54,00,000/-. It is submitted that the aforesaid amount totaling to Rs.29,00,000/- was indeed received on various dates towards rent payable by the informant. In this context, on 4th November 2023, a bill was raised by the father of the applicant, who is the owner of the said machine, to the informant as well as his partner towards balance amount of Rs.25,00,000/- payable towards rent. It is submitted that a notice in that context was also issued on 22nd January 2024, when the father of the applicant informed the informant and his partner that a cheque of Rs.15,00,000/- issued by the partner of the informant was being deposited in the bank and that appropriate arrangements may be made to ensure that it is cleared.

5. It is submitted that in response to the said notice, the

informant sent a reply on 27th January 2024, claiming that the contents of the notice issued by the father of the applicant were absolutely false and that there was no question of the accused persons raising any bill against the informant. It is submitted that the informant in this backdrop has approached the Police, claiming that the transaction between the parties was one of sale of the said machine. It is submitted that, the FIR is obviously belated, for the reason that even according to the applicant, the last payment was made in December 2022 while the FIR has been registered on 14th February 2024.

6. On the other hand, the learned APP submitted that the ingredients of the offences registered against the applicant and the co-accused person are made out. There is clear statement of the informant, as to the manner in which the accused persons lured the informant in parting with huge amount of money without supplying the machine.

7. This Court has perused the material on record. Even according to the informant, the last payment was made on 22nd December 2022, while the FIR was registered on 14th February 2024. At this stage, there does not appear to be any explanation for the considerable delay on the part of the informant in approaching the Police for registration of the FIR.

8. In this backdrop, when the document at Exhibit 'D' is perused, it is found that on 4th November 2023, the father of the

applicant had issued a bill to the partner of the informant, as regards the balance amount of rent due for use of the said machine. Subsequently, on 22nd January 2024, a notice was issued by the father of the applicant (Exhibit 'F') to the informant and his partner as regards the cheque of Rs.15,00,000/-. It is seen that in the reply to the said notice the informant, on 27th January 2024, has merely denied the contents and he has not, in any manner, raised the issue of having been allegedly cheated by the accused persons by failing to handover the machine, despite having received consideration amount of Rs.29,00,000/-.

9. When the aforesaid documents are perused, a *prima facie* case is made out by the applicant that the FIR appears to be a counterblast and an after thought, thereby making out a case for favourably consideration of the prayer made in the present application.

10. 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. 0112 of 2024 dated 14th February 2024 registered at Khed Police Station, Pune (Rural), for the offences under Sections 406 and 420 read with 34 of the (IPC), he shall be released on bail on furnishing PR Bond of Rs.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 26th June 2024 and thereafter, as and when required by the Investigating Officer, till filing of the final report. The applicant shall cooperate with the Investigating Officer during the course of investigation.

(c) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

12. The application is disposed of.

MANISH PITALE, J.