



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.1073 OF 2023
(Sayyed Ayaz Ali s/o Maqsood Ali Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.A. Naik, Advocate for the applicant.
Mr. S.S. Hulke, APP for the non-applicant/State.
Mr. D.V. Mahajan, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 15, 2024

By this application, the applicant is seeking bail in connection with Crime No.609/2023 registered with Police Station Gittikhadan, Nagpur for the offences punishable under Sections 409, 420, 504 and 506 of the Indian Penal Code.

2. The applicant is arrested on 10/08/2023 and since then he is behind bar.

3. The crime is registered on the basis of report lodged by Pradeep Singh Vanshnarayansingh on an allegation that he received a phone call from the Justdial of the present applicant, therefore, he met him who engaged him to provide him security guard for the lawn being he is owner of KRC lawn. In view of the oral agreement, the informant has deputed four guards on the payment of Rs.10,000/- per month for each guard. As per the allegation, the applicant has not paid the amount

towards the payment of the said guard and issued a cheque which was dishonoured while depositing the same. It is further alleged that said *modus operandi* is used by the present applicant by obtaining the amount towards the booking amount against the lawn and not paid the amount of other persons. On the basis of said report police have registered the crime against the present applicant. Learned Counsel for the applicant submitted that as far as the allegations are concerned regarding the payment by cheque, the proceeding under Section 138 of the Negotiable Instrument Act, 1881 are already initiated. He further submitted that even taking into consideration the allegation as it is, the intention of the applicant for misappropriation of the amount does not revealed. Now, the investigation is completed and charge-sheet is already filed, further incarceration of the present applicant is not required. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant has not only defrauded the informant but there is allegation by the several persons who have paid the amount towards the booking of the KRC lawn, but the amount of the said person is also not returned back and the cheques issued are dishonoured. He further submitted that, further custodial interrogation of the present applicant is necessary. If he is released on bail he will tamper with the prosecution evidence.

5. Learned Counsel for the informant has also raised the strong objection on the ground that KRC lawn against which the applicant has obtained the amount is on the Government land by encroaching the same and order is already passed by the Tahsildar to that effect which shows the intention of the present applicant to commit such offence. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for the parties. Perused the recitals of the FIR. As far as the allegations are concerned which is to the extent that, the present applicant has obtained the facility of providing the guards from the informant on the payment of Rs.10,000/- per guard which is not paid and the cheques issued by him is dishonoured and the proceeding is already initiated against the present applicant under Section 138 of the Negotiable Instrument Act, 1881. The another set of allegation is that he has also obtained the booking amount against the KRC lawn and subsequently he has cancelled the said booking. The allegation is supported by the statements of various witnesses recorded by the Investigating officer during the investigation. The learned Counsel for the applicant and learned Counsel for the informant also invited my attention towards the order passed by the Tahsildar showing that applicant has encroached upon the Government land. As far as the allegation regarding the encroachment upon the Government land is a dispute which can be decided by the

Civil Court by ascertaining the evidence whether it is an encroachment or not. The allegation against the present applicant in the present FIR is concerned is also appears to be of a civil nature at this stage. Whether there was an intention since inception is a matter of evidence. At this stage, now investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. Considering the nature of the allegation and the investigation is already completed, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant - Sayyed Ayaz Ali s/o Maqsood Ali in connection with Crime No.609/2023 registered with Police Station Gittikhadan, Nagpur for the offences punishable under Sections 409, 420, 504 and 506 of the Indian Penal Code, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose.

(iv) The applicant shall furnish his cell phone number and address with the address proof and shall attend the trial Court on each and every date.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*