Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2724 OF 2024

Sheldon Frank Vaz .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.3571 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 2724 OF 2024

Karandeep Singh Tarlok Singh Lugani .. Intervenor
IN THE MATTER BETWEEN
Sheldon Frank Vaz .. Applicant
Versus
State of Maharashtra .. Respondent

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- Mr. Mithilesh Mishra i/b Sohel Syed, Advocates for the Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent – State.
- Mr. Jitesh Agarwal, Advocate for Intervenor.
- Ms. Abhilasha Bhosle, PSI, Andheri Police Station – Present.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2025

P. C.:

1. This Bail Application is filed under Section 439 of CrPC[1] seeking regular bail in connection with C.C. No. 471/PW/2024 for offences punishable under Sections 406, 420, 506 read with section 34 of IPC[2].

2. Applicant is alleged to have disposed off high end cars which he had rented from First Informant – Intervenor. He is also alleged to

1 The Code of Criminal Procedure, 1973.
2 Indian Penal Code, 1860.

have utilized monies for his personal expenses which were entrusted upon him for purchasing one car by the first informant.

3. Prosecution case is broadly based on the version narrated by the First Informant in his FIR. It is stated in the FIR that the First Informant knew the Applicant since past 13 years. It is stated that in February 2023, Applicant met the father and family of First Informant and discussed with them about his business of renting highend cars on rent to five star hotels and corporates. Thereafter Applicant met them at their residence and told them about the bright prospects of making profit in the business after which the parties came to the decision of conducting business together. This was followed by a discussion on the business model and make of second hand cars which would be suitable for the business. The First Informant and his father thereafter invested their savings and also took loans from bank to purchase 19 high end luxury cars with the aid of the Applicant's expertise. The cars were then given to the Applicant for a period of one year under separate contracts with Applicant agreeing to pay a monthly return to the first informant and or his family members as agreed between the parties. A failure to pay the monthly return after the fifth month in the tenure of the rental agreements and subsequent knowledge that the Applicant had given the subject cars on heavy deposit to third parties led to the filing of FIR. It is alleged in the FIR that the Applicant has not returned

9 high end luxury cars. Subsequently all cars are recovered. It is also alleged in the FIR that Applicant misappropriated a sum of Rs.8,20,000/- for his personal gain. That this money was transferred to him in two tranches to purchase a second hand Audi A-6 car for the first informant's use. Applicant was arrested on 07.12.2023 and has been in custody since.

4. Learned Advocate, Mr. Mishra appears on behalf of Applicant. He would submit that Applicant is innocent and is falsely implicated in the case. He would submit that rights between Applicant and First Informant are governed by mutual contracts of all cars and of a civil nature. That there is no element of deception or cheating which can be derived from the facts of the case. He would submit that Applicant initially used to regularly transfer the monthly rental amounts to the First Informant from time to time which indicates his *bonafides*. He would submit that the Applicant is not the beneficiary of alleged monies in question. He would submit that Applicant has already suffered custody for about 16 months pending trial and since investigation is already completed, all cars having been recovered, his further incarceration is unwarranted as it would amount to pre-trial punishment. He would therefore pray for Application to be allowed.

5. Learned APP, Mr. Karmakar would ardently oppose the bail Application. He would submit that Applicant has induced First

Informant to invest in his business and thereafter strategically disposed of the high end cars for his personal gain. He would submit that Applicant has been operating on the same *modus operandi* and has wronged many. He would submit that the Applicant has multiple similar antecedents and setting him at liberty would enable him to resume with his menace. He would thus pray for the Application to be rejected.

6. Learned Advocate, Mr. Agarwal appearing on behalf of the Intervenor has vehemently opposed the Application and would submit that Applicant has tactfully and deceitfully indulged in the said acts and on the basis of false promises induced First Informant to make investments in his business. He would submit that the Applicant, by dishonestly using the subject matter cars has caused monetary loss to the First Informant and has thus committed Dishonest Misappropriation of property as defined under Section 403 of IPC. He would place reliance on the texts of the WhatsApp chats annexed to his Intervention Application to submit that Applicant has given the first informant death threats and thus his acts are covered under Section 506 of IPC with a maximum punishment of upto 7 years. He would submit that the acts of Applicant create an apprehension in the mind of First Informant that the Applicant would inflict harm upon him, if released. He would thus pray for the Application to be rejected.

7. I have heard the learned advocates at the bar and with their able assistance, perused the record of the case.

8. It is settled law that ingredients of offence under Sections 406 and 420 are distinct and thus, cannot co exist. In the case of **Delhi Race Club (1940) Ltd. v. State of U.P.**[3] it was held thus:-

> *"**36.** What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:*
>
> ***In order to constitute a criminal breach of trust (Section 406 IPC)***
>
> *(1) There must be entrustment with person for property or dominion over the property, and*
>
> *(2) The person entrusted:*
>
> *(a) Dishonestly misappropriated or converted property to his own use, or*
>
> *(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:*
>
> *(i) Any direction of law prescribing the method in which the trust is discharged; or*
>
> *(ii) Legal contract touching the discharge of trust (see:S.W. Palanitkar).*
>
> ***Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:***
>
> *(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;*
>
> *(2) Fraudulently or dishonestly inducing any person to deliver any property, or*
>
> *(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab)*
>
> ***37.** Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*
>
> ***38.** In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the*

3 (2024) 10 SCC 690

mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415IPC, punishable under Section 420IPC.

39. *Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha.*

"4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.

40. *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.*

8.1. From the above pronouncement it is amply clear that only one of Section 420 and 406 can survive after trial as both offences have polar opposite ingredients. Another facet in which these two offences distinguish themselves is the maximum term of imprisonment. Where in a case of Section 420 the maximum term of imprisonment is upto seven years; in a case of Section 406, the maximum term of imprisonment is upto three years.

9. In the decission of ***G.V. Rao* v. *L.H.V. Prasad***[4] *i*t was observed that intentional dishonesty or fraud is an essential ingredient to constitute an offence of cheating. The Court held thus:-

> "*7.* As mentioned above, Section 415 has two parts. While in the first part, the person must 'dishonestly' or 'fraudulently' induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional."

10. In the case of ***Hridaya Ranjan Prasad Verma v. State of Bihar***[5] it was held that dishonesty or fraudulent act should be at the beginning, that is, at the time of making promise.The Court held thus:-

> *"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.*

4 (2000) 3 SCC 693

5 2000 (4) SCC 168

> *Therefore it is the intention which is the gist of the offence.* ***To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.****"*

11. In the present case, *prima facie* no element of dishonesty or fraud at the beginning has been made out. A perusal of the statement in the FIR indicates that the Applicant and First Informant were friends and both knew each other since past 13 years. It is even admitted that the Applicant was initially paying the monthly rentals as agreed between the parties. In such circumstances, a case under Section 420 is *prima facie* not made out against Applicant. However the amount of Rs. 8,20,000/- given to the Applicant having been misappropriated by him indicates the offence under Section 420.

12. In so far as the allegation under Section 406 is concerned, the allegation flows from a conversation between the parties on 13.12.2023; the same is discerned from an averment in the Intervention Application of the Intervenor and also a screenshot of the conversation appended at page No.37. I have perused the said conversation. It reads thus :-

"Take care of your safety. U (you) are being hunted down. Telling for ur (your) own safety."

13. After having gone through the record, I am of the *prima facie* opinion that although offence under Section 506 appears to have been made out against Applicant; however, it is unclear whether the offence is of a nature to be described as a 'death threat' thus attracting a higher quantum (7 years instead of 2) is something for the Trial Court to determine after considering the material on record on evidence and in accordance with established procedure. I am not inclined to reject Applicant's Application based solely upon the ambiguous conversation. Appropriate conditions can be imposed to ensure that the Applicant does contact the Fist Informant.

14. The Intervenor – First Informant has also alleged and explained how actions of Applicant would constitute an offence under Section 403. Since the said charge is not attracted in the chargesheet, I am not inclined to give reasons for not considering his submissions on that aspect. Be that as it may, the maximum punishment of offence under Section 403 and 406 is upto 2 and 3 years respectively whereas Applicant has already undergone 16 months in prison prior to conviction pending trial.

15. In my *prima facie* view, although Applicant may have wronged the First Informant, the charges against him, in all likelihood, will at best, attract a punishment of upto 3 years. Applicant has already undergone imprisonment for a period of 1 year and about 4 months pending trial. Recovery of all the cars has already been made.

Investigation is complete. Hence, I am of the *prima facie* opinion that Applicant's further incarceration is unwarranted.

16. In view of the above, *prima facie* observations, Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

(ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

17. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

18. Bail Application No.2724 of 2024 is allowed and disposed. As a result of the aforesaid Interim Application No. 3571 of 2024 is also disposed.

[MILIND N. JADHAV, J.]