

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 350 OF 2024

Govind O. Soni

..... Applicant

VERSUS

State of Maharashtra

..... Respondent

Mr. Mahesh Vishwakarma a/w. Ms.Moni Thakur, Ms. Ayesha Qureshi i/b. Ms.Naina Sharma for the Applicant.

Mr. Anand S. Shalgaonkar, A.P.P. for the State.

CORAM : RAJESH S. PATIL, J.

DATE : 3rd FEBRUARY, 2025

P.C. :-

1. This anticipatory bail application has been filed in FIR No. 0203 registered with Vanrai Police Station, Brihan Mumbai Shahr, under Sections 406, 420 of the Indian Penal Code.

2. This court on 6th January 2025 has passed the following order :-

1. Heard Mr. Pasbola, learned Advocate for Applicant, Mr.Devnani, learned Advocate for Intervenor and Ms. Gajwe-Dhumal, learned APP for the State.

2. Considering the spate of the orders passed in the

present matter and the facts which have transpired in the interregnum, I have impressed upon the parties to take appropriate instructions and inform the Court accordingly. Mr. Pasbola will take instructions and inform the Court as to whether Applicant is ready and willing to pay the amounts contained in the 4 balance cheques which was the part of the settlement arrived at between the parties in the interregnum after filing of the present Anticipatory Bail Application. Learned Advocate for Private Respondent shall take instructions and inform the Court accordingly. The impression given is that this Court has been relegated to a Recovery Court. This will need to be looked into.

3. In the meanwhile ad-interim relief granted earlier, if any, to continue till next date.

4. List this matter on 27th January, 2025 under the caption "For Directions".

3. Both parties are in the business of making gold ornaments. It seems that the first informant had given a job work to the applicant for preparing certain gold ornaments. The applicant has already filed a civil suit under Section 37 of the Specific Relief Act, 1963 in the City Civil Court, Mumbai being S. C. No. 413 of 2023 seeking directions against the first informant. Prayer clauses (a) and (b) read as under :-

(a) That this Hon'ble Court may be pleased to direct the Defendant, his servants, agents, officers, representatives and/or any persons claiming through or under him by an order and injunction of this Hon'ble Court to return the surplus gold of 806.184 gms. Or the market value of the said surplus gold.

- (b) That interim and ad-interim reliefs in terms of prayer
- (a) above be granted.

4. Similarly, the first informant has filed four complaints under Section 138 of the Negotiable Instruments Act, 1881 in Metropolitan Magistrate Court at Borivali.

5. Additionally, the first informant has issued a pre-mediation notice as defined under the Commercial Courts Act, 2015. It seems from the FIR that the main dispute between the parties pertains to accounts mainly as regards the calculation of the rate of amount payable, specifically as to whether the rate should be 4% or 8%. The first informant is relying upon the document, a copy of which is annexed at page 95. The said document is dated 12th November 2021 being a receipt of the applicant. The first informant's case is that there is some kind of scribbling on the said document. Though it appears of some kind of scribbling is on the document a copy of which is at page 95, the said issue will be is a subject matter of the evidence to be decided at trial.

6. The applicant states that taking into consideration over all situation no purpose be solved by taking custodian interrogation of the applicant and thereafter releasing him on bail. The applicant is ready and willing to co-operate with the investigating officer as and when she is called for recording for statement.

7. In the Judgment of the Hon'ble Supreme Court in the cases of (a) ***Sarbjit Kaur V/s. The State of Punjab & Anr***, in ***Criminal Appeal No.581 of 2023***, (b) ***Hridaya Ranjan Prasad Verma V/s. The State of Bihar & Anr*** reported in ***(2000) 4 SCC 168*** it has been held that where there is purely a civil dispute between the parties, criminal proceedings should not be entertained which is merely filed to pressurize the parties into settling the dispute. The paragraph no. 13 of **Sarbjit Kaur (supra)** reads as under :

“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it

was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

8. The paragraph no. 15 of Hridaya Ranjan Prasad Verma (**supra**) reads as under :

“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. 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.”

9. Taking into consideration the law laid down by the Supreme Court in above judgment and the facts of the present proceedings, in my view, the custodian interrogation is not necessary. Case has been made out to grant Anticipatory Bail to present Applicant.

10. In view of the above, the above anticipatory bail application requires to be allowed. Hence, the following order :-

ORDER

- (a) The anticipatory bail application is allowed.
- (b) In the event of arrest in connected with FIR No. 0203 registered with Vanrai Police Station, Brihan Mumbai Shahar, the applicant shall be released on bail on furnishing PR. bond to the extent of Rs.30,000/- with one or more sureties of the like amount.
- (c) The applicant shall co-operate with the investigation and attend the Investigating Officer of the concerned Police Station, as and when called.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Courts or any Police Officer and should not tamper with evidence.

(e) The applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

11. In view of the above, **the anticipatory bail application is disposed of.**

[RAJESH S. PATIL, J.]