

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 160 OF 2025

Tejas Lalit Soni	.. Applicant
Versus	
State of Maharashtra & Anr.	.. Respondents

WITH
INTERIM APPLICATION NO. 437 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO. 160 OF 2025

Amit Jayantilal Mehta	.. Applicant
Versus	
State of Maharashtra & Anr.	.. Respondents

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- Mr. Saurabh Ghag a/w Ms. Dakshata Sawant & Ms. Nikita Chavan, Advocate for Applicant.
 - Ms. Shilpa K. Gajare-Dhumal, APP for Respondent No.1 – State.
 - Mr. Prashant Malik a/w Mr. Harishkumar S. Zende & Ms. Gauri R. Parab for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.
DATE : JUNE 9, 2025

JUDGEMENT:

1. Heard Mr. Ghag, learned Advocate for Applicant; Ms. Gajare-Dhumal, learned APP for Respondent No.1 - State and Mr. Malik, learned Advocate for Respondent No.2 / Intervener - First Informant.

2. This Anticipatory Bail Application is filed under Section 438 of Code of Criminal Procedure, 1973. Applicant apprehends arrest since he is named in FIR bearing No. 1448 of 2024 dated 21.12.2024 registered with Amboli Police Station for offences punishable under

Sections 420 and 409 of the Indian Penal Code, 1860 (for short "**IPC**"). The FIR was transferred to Economic Offences Wing (EOW) Unit – 5, General Cheating III, Mumbai and re-numbered as CR No.74 of 2024.

3. Prosecution case emanates from the version narrated by Respondent No.2 – Complainant in the FIR. The version initiates in the backdrop of a Sole Selling Distribution Agreement dated 08.06.2023 ("**Agreement**" hereinafter) the terms of which, according to Prosecution, have been breached by Applicant. This breach led to termination of the Agreement by the counter party – Hunnar Jewels (Hereinafter "**the Company**") on 07.11.2023. There was a Novation of Contract in May 2024 between parties. According to Complainant, there was breach committed thereafter. Prosecution asserts that Applicant was obligated, post to return back the gold stock received by him under terms of the Agreement / Novation back to Complainant Company. Prosecution alleges that Applicant refrained from returning back the balance gold stock and misappropriated the same. This led Respondent No.2 (CFO of the Complainant Company) to lodge the FIR on 21.12.2024. Charges are under Sections 409 and 420 of the Indian Penal Code 1860 (for short "**IPC**").

4. Mr. Ghag, learned Advocate appearing for Applicant in support of the Application would submit that Applicant has abided by all terms and conditions of the Agreement and was consternated upon

receipt of termination letter dated 07.11.2023 which, according to him, was sudden and unexpected. He would stress on the fact that the termination letter was the first instance of any communication between parties where possibility of termination was put forth by Complainant Company. He would submit that even in the prosecution complaint essential ingredients of Section 409 and Section 420 of IPC are not satisfied and hence there is no *prima facie* case made out whatsoever by prosecution against the Applicant. He would submit that even if there is a dispute raised due to any alleged breach, the same would be civil in nature since rights of parties are governed by terms and conditions of the Agreement which was terminated and Novation was exercised and therefore the Company should exercise remedy as recited in the agreement i.e. either referring the dispute to arbitration as per *clause 16* of the Agreement or approach the Civil Court of appropriate original civil jurisdiction against Applicant. He would submit that invoking criminal action / offence in the alternative belatedly in such facts where rights of parties are governed by mutual agreement and terms of contract is impermissible as there is no element of deceit or fraud involved at the inception stage in the present case. In support of his above submissions, he would refer to and rely on the following decisions of the Supreme Court:-

- (i) *Jay Shri & Anr. Vs. State of Rajasthan*¹;
- (ii) *Rikhab Birani & Anr. Vs. State of Uttar Pradesh*²;
- (iii) *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.*³

5. PER CONTRA, Ms. Gajare – Dhumal Learned APP for Respondent – State would vehemently oppose the Application. She would submit that Applicant and his friend Hemendra Jain lured Mr. Giriraj Agrawal (CFO) of the Company into executing the agreement making offshoot investment by portraying good business opportunity. She would submit that Applicant was supposed to receive 50 Kg gold as part of the agreement of which he received 20 Kg gold which is an undisputed fact. She would submit that Applicant took orders for manufacturing gold ornaments from his other Corporate clients but instead of purchasing raw gold for fulfilling their demand, he misappropriated the gold stock received from First Informant in his custody for the said purpose. She would submit that custody of Applicant is required since Applicant is incommunicado despite being contacted twice requiring him to submit all relevant disclosure and data of stock and account for monies and gold stock which is yet to be ascertained by the prosecution. She would submit that Applicant has received gold from many such traders and clients for manufacture of

1 2023 SCC OnLine SC 54

2 SLIP (Cri) 8592 of 2024

3 2010 SCC OnLine SC 1375

articles but failed to return the same and in this regard one such complaint filed by one of his other client is placed on record. Hence, she would pray for Application to be rejected.

6. Mr. Malik, learned Advocate appearing on behalf of Respondent No.2 would adopt the submissions of Ms. Gajare-Dhumal, learned APP and make some additional submissions for consideration of Court. He would rebut the submissions of Mr. Ghag by submitting that Applicant, who is in the business of manufacturing gold ornaments and jewellery falsely represented to First Informant that he had several pending business orders from reputed Corporate companies like Reliance and Titan and lured him to join his business venture and invest gold available with him. He would submit that this false representation depicted Applicant's fraudulent intention from the very inception to deceive Complainant Company and thus essential ingredients of Section 420 and 409 are *prima facie* met with. He would submit that despite repeated reminders and calls from First Informant, Applicant has shown no *bona fides* and repeatedly evaded giving answers or gave *mala fide* promises. He would submit that in such circumstances, Complainant Company was left with no other option but to accept a further proposal / Novation from Applicant to overcome the situation but was once again deceived by him. He would submit that Applicant's act have caused immense financial and reputational losses to Complainant Company. He would submit that

Applicant remains in possession of Complainant's property i.e. gold stock which needs to be returned / recovered.

6.1. According to him, there has been inducement on the part of Applicant right from inception to deceive the Company. He would submit that first inducement by Applicant was in October 2022 when he made an offer to First Informant to become his business partner which did not fructify. According to him, thereafter Applicant reverted back with the proposal to enter into a Sole Selling Distribution Agreement. He would submit that on non-compliance of obligations of the Sole Selling Distribution Agreement for a period of more than 5 months when First Informant expressed his mind to terminate the agreement, at that time Applicant once again induced First Informant by offering to deposit 5 Kgs. of gold ornaments in 5 Retail showrooms and persuaded him to open 5 retail showrooms and to show his *bonafides* he deposited 2 Kgs. of gold in one of the showroom which was opened by First Informant. He would submit that Applicant took back 1.5 Kgs of the said gold ornaments which was deposited in the retail showroom for the purpose of hallmarking them but once again deceived First Informant and did not return back the same. He would submit that Applicant has not shown any *bonafides* to return the delivered property namely gold and has failed on his promises. He would submit that First Informant entered into a contract with Applicant on the sole belief that Applicant was inundated with

substantial orders for manufacture of jewellery from the Corporate world but it was not so. He would submit that in the entire episode of association with Applicant, Informant was kept away from the business of manufacture of gold ornaments in Applicant's factory without any disclosure being made to him under the Sole Selling Distribution Agreement. He would submit that *modus operandi* of Applicant was to induce and lure persons to deliver raw gold and make false promises of lucrative returns and thereafter misappropriate the gold. He has relied upon the decision in the case of ***Priti Saraf & Anr. Vs. State of NCT Delhi and Anr.***⁴ to contend that Supreme Court has observed that many a times, the offence of cheating is committed in the course of commercial transaction between parties which has happened in the present case. He would persuade the Court to therefore reject the present ABA.

7. I have heard the learned Advocates appearing for the respective parties and with their able assistance, perused the record of the case. Submissions made by them has received due consideration of the Court.

8. Prosecution alleges deception played by Applicant on two separate occasions; first occasion being when he misrepresented he having large pending orders from reputed Corporate Companies for manufacture of gold articles and second occasion being when both

⁴ Criminal Appeal No(s) 296 of 2021 (Arising out of SLP (Cri) No. 6364 of 2019)

parties came to a settlement on terms agreed upon by them but the same once again been breached by Applicant. It is seen that Applicant has disputed the allegations in the FIR. In such circumstances, I am constrained to rely on the material on record to arrive at my *prima facie* findings.

9. From the record, it appears that parties are at loggerheads upon aspects which are governed by the terms of the Agreement and Novation. Although allegations are made that Applicant deceived the Complainant Company on two separate occasions, no material is placed on record by prosecution to substantiate such a claim. According to the contractual terms the first instance for cause of action arose in July 2023. All the purportedly incriminating material against Applicant appear to be emanating out of contractual obligations of parties governed by the Agreement dated 08.06.2023. At this juncture, I find it apropos to list out a few relevant terms of the subject Agreement which read as under:-

9.1. Recital 2.3 of the Agreement deals with return of gold. The clause reads thus:-

“2.3 On expiry of the term or early termination of this Agreement by the ABL, the Hunnar shall handover to the ABL, the gold, free from all encumbrances, within 45 days of such expiry or termination and shall execute such instrument(s) and deeds as the ABL may require the Hunnar to execute. Upon such expiry of the term or early termination of this Agreement, the Hunnar shall ensure that the gold is returned in the same manner and purity or in the finished manner as represented by them.

9.2. Clause 5.2 of the Agreement deals with deposit of gold, payment of return and termination of agreement upon failure to fulfill the conditions. The clause reads thus:-

"5.2 It is specifically agreed by between parties that ABL will give advance of 50 kg of Gold (purity 99.5) within 45 days from the date of insurance cover starts and lease / sub lease of premises of Hunnar starts SUBJECT / PROVIDED that Hunnar shall pay minimum assured return of 2% p.m. of the value of such Gold (purity 99.5) and further assured ABL that there shall be a minimum double turnover of the finished goods metal every month and this term shall be treated as a CONDITION PRECEDENT for the continuance of this Agreement. Upon failure by Hunnar in fulfilling the above 2 conditions than ABL shall terminate this Agreement forthwith."

9.3. Clause 15.5 of the Agreement deals with the obligations of parties upon termination. The said clause reads thus:-

"15.5 Upon termination of this Agreement:

(i) Both parties shall be relieved of their respective rights and obligations under the Agreement save such obligations and/or liabilities of the Parties that may survive the termination.

(ii) Hunnar shall immediately return to ABL any and all unused precious metals / Raw materials / finished goods which are kept in the premises of Hunnar." (emphasis supplied)

10. Insofar as the present case is concerned dates are crucial in order to appreciate rights of parties qua each other leading to filing of FIR. Hence it would be worthwhile to delineate the facts for better understanding of the rights of parties. From the prosecution case, it is seen that Applicant - Tejas Lalit Soni and one Hemendra Jain who were the partners of Hunnar Gold approached and convinced First Informant in October 2022 with a proposal to join their Company and

invest gold for the purpose of manufacturing gold ornaments. Hunnar Gold had a factory at Kandivali which manufactured gold ornaments for the Corporate world including Reliance, Titan etc. Thereafter in May 2023 a revised proposal was made by Applicant to First Informant and after negotiations between them, both Applicant and First Informant decided to execute Sole Selling Distributor Agreement dated 08.06.2023. Under this agreement it was decided that First Informant will give 50 Kgs. of gold as stock deposit for manufacture of gold ornaments to Applicant and in lieu thereof as return, First Informant will receive 2% of the value of gold on monthly basis and if there was any default for more than 15 days proportionately First Informant would be entitled to receive 3% of the value of gold deposit.

10.1. It is seen that apart from the above principal clause of Sole Selling Distributor Agreement, there were several other rights and obligations listed in the agreement *qua* the Applicant on one hand and the First Informant on the other hand whereby Applicant was required to involve the First Informant in the business of manufacture of gold ornaments in his factory.

10.2. In the interregnum on 04.07.2023 First Informant changed the name of his company from "ABL Ltd" to "Hunnar Jewels Ltd". This was on the advice of Applicant whose company was named as "Hunnar Gold". It is seen that First Informant deposited 20 Kgs. of gold with

Applicant despite the fact that as per the agreement, he was required to deposit 50 Kgs. of gold. Sometime in September 2023, a meeting took place between First Informant and Applicant wherein he complained about non-disclosure of his obligations to him by Applicant. It was lamented that First Informant was denied access to stock verification and Tally access, disclosure relating to manufacture of gold ornaments and most importantly large scale cash transactions carried out by Applicant. In that view of the matter, First Informant refused to deposit further 30 Kgs. of gold with Applicant. In November 2023 First Informant reminded Applicant of non-receipt of 2% promised returns as per Agreement on the value of the stock of gold deposited with him and threatened to terminate the Agreement. Thereafter First Informant by termination notice dated 07.11.2023 terminated the Agreement for breaches and by virtue of such termination sought return of gold which was deposited with Applicant.

10.3. It is *prima facie* seen that termination of agreement was on account of seven reasons i.e. violations of clauses 3.3, 3.9, 3.11, 5.2, vi,10.9 and 1.13 which were the rights and obligations as per the Agreement which were not complied with by Applicant according to First Informant. Primarily it was the First Informant's case that there was non-compliance of substantial obligations as stated in the Sole Selling Distribution Agreement between parties and majorly non-disclosure by Applicant which led to giving of termination notice.

Thereafter there is a hiatus of 6 months until 15.05.2024 when the Applicant to show his *bonafides* presented a credit note to First Informant which confirmed the fact that the entire gold which was given by First Informant to Applicant was invested and in safe custody with Applicant along with returns that the First Informant was entitled to. Believing the credit note which was given by Applicant, First Informant thereafter accepted another proposal of which there is no documentation placed before the Court but which finds place in the record and is endorsed by First Informant as reflected in the FIR.

10.4. According to the new proposal given by Applicant, First Informant was directed to open 5 retail showrooms and Applicant obliged and agreed to deposit 5 Kgs. of gold ornaments in each of the 5 showrooms to account for return of First Informant's investment of 20 Kgs of gold along with his returns earned as per the Sole Selling Distribution Agreement. In this regard when Applicant and First Informant met on 22.06.2024 to discuss the proposal, to show his *bonafides* Applicant deposited 2 Kgs. of gold in one of the retail showroom but took back 1.5 kgs. gold for the purpose of hallmarking the manufactured articles and left only 500 grams of gold in the hands of First Informant. Since Applicant did not return back the said 1.5 Kgs. gold, First Informant waited for sometime and ultimately on 21.12.2024 lodged the FIR with Amboli Police Station. Pursuant to filing of FIR, the Economic Offences Wing (EOW) of the State issued

two notices dated 02.01.2025 and 17.01.2025 to Applicant for enlisting his cooperation in the investigation. In view of receiving such notices and apprehending his arrest, Applicant has filed the present ABA.

11. In the backdrop of the aforesaid facts, what is crucial for the Court to consider are the rights between the parties. *Prima facie* relationship between the parties is primarily seen when parties have indulged in negotiations at various point of time to take their relationship forward despite First Informant giving the Termination Notice. It is seen that the Sole Selling Distribution Agreement is the fulcrum of the dispute of parties. The said Agreement was terminated in view of the alleged violation of 7 obligations under the said Agreement by Applicant. According to First Informant one of the principal breach was that he has not received return of 2% per month of the value of the advanced gold which was deposited with Applicant despite assurance given by Applicant to him. That apart another principal obligation is with respect to non-disclosure of documents pertaining to non-disclosure of compliances, inventory audit, tax documents, all types of reports i.e. waste generated report, stock report, consumption report, WIP, production report on monthly basis as per the Agreement. When the termination notice appended at page Nos.91-92 of Applicant is perused, it is *prima facie* seen that some of the issues which were raised in the termination notice leading to

termination of Agreement are primarily leading to non-compliance of obligations under the Agreement.

12. It is seen that clause 16 of the said agreement pertains to Dispute Resolution and jurisdiction to be invoked by First Informant. Rather First Informant has waited for more than 13 months to file the FIR after the termination notice after reviving the contract. This delay is *prima facie* attributable to First Informant agreeing to the Novation of the contract. There is no material placed on record with respect to Novation for Court to believe the case of First Informant. *Prima facie* it is seen that insofar as the Sole Selling Distribution Agreement is concerned, copy of the Agreement is placed on record which governs the rights and obligations of both parties. That apart it is seen that parties were in a relationship pursuant to execution of Agreement on 08.06.2023 and therefore whether at the inception stage at the time of executing the agreement and whether Applicant followed deception by making false or misleading representation cannot be ascertained at a *prima facie* stage and it can only be done when prosecution leads evidence to that effect and proves the same. What is alleged by First Informant is a contractual dispute or breach of the contract *per se*. Prevailing impression is that civil disputes are time consuming and therefore present complaint has been filed by invoking criminal jurisdiction and criminal procedure which may be the reason for First Informant to approach the law enforcement agencies.

13. Question before the Court is whether in the first instance, Applicant before the Court had any intention of defrauding the First Informant. That apart whether arrest of Applicant would be the right course of action is what Court will have to see in the present facts. From the complaint made by the First Informant, it is seen that First Informant is aggrieved because of Applicant not sharing with him details of all his debtors for whom he manufactured gold ornaments and sold the said gold ornaments on credit. Second grievance is that entire production of Applicant was required to be routed through First Informant except for the corporate production and that not having been complied with Applicant is alleged to have breached the conditions in the Agreement. Next First Informant has alleged that it was decided between parties that inventory audit will be done every month which was not complied with after execution of the Agreement on 08.06.2023. First Informant has not placed on record any material whether he ever called upon Applicant for these compliances. Thereafter First Informant has alleged that as stated in the agreement, Applicant has not paid the assured return of 2% per month of the value of advance gold given by First Informant. Neither has he honoured his commitment relating to turnover of finished goods every month. First Informant has also alleged that documents pertaining to applicable tax law in a single tally document has not been provided for verification.

14. That apart it is alleged that Applicant failed to provide 5 different types of returns namely pertaining to stock report of gold, waste generated report while manufacturing gold ornaments, all types of stock reports, consumption reports, WIP and production reports on monthly basis and failed to give inspection to the First Informant regarding verification of stock of products. When all such breaches are alleged, it was well within the realm of the First Informant to seek such information as and when it was due as per the terms and conditions of contract rather than wait for more than 18 months after the first default post execution of the Agreement in June 2023 and file the FIR on 21.12.2024. However it is seen that cause of action arose for the first time to the First Informant after completion of 1st month of the contract as per the terms of contract and prosecution case.

15. I am of the *prima facie* opinion that the aforesaid information can be provided by Applicant on his participation in the investigation for enabling the prosecution to seek answers to the issues complained of by First Informant. Custody of Applicant in that regard is therefore not required and is unwarranted once the Applicant places the record and disclosures how he dealt with the gold received from First Informant. In that view of the matter, request made by Respondent No. 2 - First Informant for rejection of present ABA stands rejected. Needless to state that Applicant will have to cooperate and make all such necessary disclosure as called for by

prosecution relating to receipt of stock of the 20 Kgs. gold pursuant to Sole Selling Distribution Agreement dated 08.06.2023 and manufacture and sale of articles therefrom from his stock record to the prosecution.

16. In the present case clause 16 of the agreement which deals with 'Dispute Resolution' is of material importance and ought to have been invoked by any aggrieved party seeking relief for non-compliance of the material term of Agreement which is clearly quantifiable in terms of money. Clause 16 of the Agreement reads thus:-

"16. DISPUTE RESOLUTION AND JURISDICTION:

In the event of any disputes and differences between the parties hereto, the same shall be refereed to the Arbitration of the Sole Arbitrator Mr. Prajna Naik, resident of E-702, Aditya Apartments, Yashwant Nagar Vakola, Santacruz East, Mumbai 400-055 under the provisions of Arbitration and Conciliation Act, 1996. Award of the Sole Arbitrator shall be final and binding on both parties hereto."

17. The aggrieved party, First Informant in the present case, has neglected / avoided / failed to invoke the Arbitration clause. In such a case, the scope of adjudication for Criminal Courts is limited to a narrow compass – To decide the question of criminality i.e. ***"Whether the act of the Applicant constitutes a criminal wrong?"***

18. While this matter presents an intriguing and rather exciting set of circumstances having precedents from various Courts settling the applicable law, I shall refrain from commenting on the merits of the charges attracted against the Applicant since this is an Anticipatory

Bail Application. I have also deliberately limited my recordings concerning the transaction between parties given the strong likelihood that the parties may be before another adjudicating authority / dispute resolution mechanism in subsequent stages of this dispute, it is prudent to avoid any pronouncements that might inadvertently be prejudicial to interests of any of the parties.

19. In the case of *Ramesh Kumar Vs. State (NCT of Delhi)*, the Supreme Court held that criminal proceedings are not for realisation of disputed dues and thus a criminal Court exercising jurisdiction to grant bail / anticipatory bail is not expected to act as a recovery agent to realise the dues of the Complainant, and that too, without any trial.

20. In the case of *Uma Shankar Gopalika Vs. State of Bihar*⁵ the Supreme Court while quashing a criminal proceedings held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. The relevant paragraph reads thus:-

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant

5 (2005) 10 SCC 336

that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused.”

21. In the case of *Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr.*⁶ the Supreme Court while distinguishing Section 406 with 420 held as follows:-

“27. 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 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 405 of IPC, punishable under Section 406 of IPC, 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 415 of the IPC, punishable under Section 420 of the IPC.

28. 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 & Ors., reported in (1973) 2 SCC 823 as

6 2024 INSC 626

under:

“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 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 Penal Code, 1860. There is nothing in the complaint to show that the respondents 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, 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 on the respondents for the offence of cheating.”

*29. 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.***

*30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed.** Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and*

different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

(Emphasis Supplied)

22. From the above, it is amply clear that criminal machinery cannot be initiated for acts which are civil in nature and 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. In the present case, the prosecution, at this *prima facie* stage, has failed to put forth any material indicating towards any manipulating act or fraudulent misappropriation of property done by the Applicant. All the materials purporting to be incriminating Applicant indicate towards acts not being done to fulfill contractual obligations which has its own remedies in law but not by initiating criminal law machinery. The question whether retention of gold involves criminal breach of trust or only a civil liability to return in these facts can only be proved at trial. At this *prima facie* stage, there appears to be no deception played by Applicant at inception of transaction as relationship of parties continued for 19 months before filing of FIR - an important element of Section 420 IPC since in the present case First Informant has accepted Novation of the Contract in

the interregnum. Similarly ingredients of Section 409 IPC do not *prima facie* seem to be satisfied on the face of record. In such circumstances, I am of the *prima facie* opinion that the aspect of ‘criminality’ is not present in the instant case at this *prima facie* stage from the record and thus liberty of Applicant deserves to be protected. Alternatively, I am also conscious of the fact that the possibility of a criminal wrong is not too far fetched and can be unearthed at a subsequent juncture, especially in light of the fact that there is another complaint lodged against the Applicant by some other client and hence this makes Applicant’s participation in the investigation of paramount importance. However Applicant will therefore have to participate and make full and complete disclosure to the prosecution as delineated hereinabove to effect appropriate recovery of the alleged gold received by the Applicant.

23. In view of the above observations and findings, the following order is passed:-

- (i) Anticipatory Bail Application is allowed;
- (ii) In the event of arrest, Applicant is directed to be enlarged on bail on he executing a P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount;

- (iii) Applicant shall report to the concerned Investigating Officer with all disclosures as called for regarding dealing with the gold stock received by him from First Informant and manufacture of articles and sale thereof by him from his Stock Register from tomorrow i.e. 10.06.2025 onwards upto three weeks daily (except Sundays) between 10:00 a.m. to 12:00 noon for interrogation and investigation and provide all such relevant and necessary details and documents and thereafter as and when called for by the I.O.;
- (iv) Applicant shall furnish particulars of his present residential and office address and mobile numbers to the Investigating Officer and also in future if he changes any of them, forthwith and he shall not leave the State of Maharashtra without prior permission of the Trial Court; Applicant shall deposit his passport with the Trial Court, if any, within a period of one week from today;
- (v) Applicant shall submit all particulars and statements / record of his / his business(es)/bank transactions from the date of his entering into the present Sole Selling Distribution Agreement contract till the present day

along with details of the Stock Register of all inventory of his goods relevant to the subject matter dispute to the Investigating Officer alongwith all relevant documents / stock register etc. for investigation;

(vi) It is directed that Applicant shall extend complete cooperation in the investigation of the case to the Investigating Officer as called for;

(vii) Any infraction of the conditions herein above shall entail cancellation of this order.

24. All parties are directed to act on a server copy of this order.

25. Anticipatory Bail Application is allowed and disposed in the above terms. In view thereof, Interim Application stands disposed.

[MILIND N. JADHAV, J.]

Ajay

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