



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
सत्यमेव जयते

S.B. Criminal Misc. Bail Application No. 4416/2024

1. Girraj Bansal, Director Of Om Shri Shubh Labh Agritech Private, Address IITM Collage, Near Hazira Police Station, Moreno Link Road Na, Gwalior, Madhya Pradesh.
2. Ketan Bansal, Director of Om Shri Shubh Labh Agritech Private Limited, Address IITM Collage, Near Hazira Police Station, Moreno Link Road Na, Gwalior, Madhya Pradesh.
3. Akhilesh S/o Purushottam Das, Age around 42 years, R/o Flat No. 605 Block A, Gulmohar City, City Centre, Near GST Building, Gird Gwalior, Madhya Pradesh.

----Petitioners

Versus

State Of Rajasthan through PP

----Respondent

For Petitioner(s)	:	Mr. Jaipal Choudhary. Mr. Hitesh Kumar.
For Respondent(s)	:	Mr. Arun Kumar, PP. Ms.Kamla Goswam, PP. Mr. Sachin Acharya, Sr. Advocate with Mr. Pritam Joshi and Mr. Karan Parihar.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

12/07/2024

1. This is an anticipatory bail moved on behalf of the petitioners in relation to FIR No. 0005/2024, registered at Police Station Kotwali, District Ganganagar, for the offences punishable under Sections 420 and 406 of the Indian Penal Code.



2. I may briefly refer to the relevant aspects of case of prosecution, as emerging from the F.I.R. allegations which *inter alia* are that complainant firm deals in agricultural commodities. The directors of the accused company "Om Shri Shubh Labh Agrotech Private Limited" are Girraj Bansal, Ketan, and Akhilesh. The company purchases agricultural commodities through its directors. Credit account of the transactions made by the accused with the complainant has been ongoing since April 1, 2020. As of April 1, 2023, the complainant was owed a total of Rs. 6,71,92,431.25 by the accused. The three directors of the company acknowledged this debt and assured early payment. They issued a cheque for Rs. 5 crore dated December 12, 2023, for this payment. However, the cheque was dishonored when deposited in the bank. In this manner, the accused has committed criminal breach of trust by deliberately usurping the goods and not paying for the commodities purchased on credit from the complainant. On the basis of aforesaid report, a formal FIR was registered against the petitioners and matter is under investigation.

3. To begin at the beginning Shri Jaipal Choudhary and Mr. Hitesh Kumar, learned counsel representing petitioners have fervently argued that both the parties were in business transaction since 01.04.2020; that entire dispute between the parties pertains to an alleged excess claiming amount against their sale; that the petitioners were not agree to pay more than the actual due amount (i.e. Rs. 3,12,56,652/-); that the complainant has



concocted this false and fabricating story by misusing the security cheque; that both the parties were doing business and for the said purpose, the complainant company took few blank cheques as security cheques; that the matter pertain to purely of civil and commercial dispute but with malafide intention complainant has given it a criminal colour by way of filing this FIR; that no offence of cheating or fraud can be established since there was no dishonest intention from the very beginning of the transaction; that the petitioner has already joined the investigation and also made a representation dated 18.01.2024. Further, the petitioners are willing and ready to settle the dispute amicably.

4. It is also argued that custodial interrogation of petitioners is not required; that there are no allegations of petitioners tampering with evidence and nothing is to be recovered from petitioners; that their antecedents are impeccable; that the petitioners are apprehending their arrest in a false case.

5. Therefore, to protect their liberty, an order of anticipatory bail may be passed in favour of the petitioners. In support of his arguments, learned counsel for the petitioners placed reliance on the following judgment:-

1. Jay Shri & Anr. Vs. State of Rajasthan
(SLP (Crl.) No. 14423/2023, decided on January 19, 2024)

6. From the other side, learned Public Prosecutor for the State assisted by Shri Sachin Acharya, learned Senior Counsel for the complainant, have strongly objected to the submissions made by



learned counsel for the petitioners and submitted that Criminal prosecution cannot be thwarted at the initial stage merely because civil remedy is available. Instant criminal cases has to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the availability of a civil remedy, cannot be made a basis for anticipatory bail.

7. It is further argued that there are serious allegations against the petitioners and on the basis of material collected so far, investigating officer has reason to believe that petitioners are guilty of offences of cheating and breach of trust of a huge amount.

8. Lastly, it was urged that benefit of anticipatory bail should not be accorded to the petitioners. In support of his arguments, learned counsel for the complainant placed reliance on the following judgments: -

1. Lekhram @ Lucky Vs. State of Rajasthan
(S.B. Criminal Bail Application No. 7699/2024,
decided on 01.07.2024)
2. Tarun Kumar Vs. State of Rajasthan
(S.B. Criminal Bail Application No. 7312/2024,
decided on 01.07.2024)
3. Ratan Singh Vs. State of Rajasthan
(S.B. Criminal Bail Application No. 7700/2024,
decided on 01.07.2024)
4. K. Jagdish Vs. Udaya Kumar G.S. & Anr.
[(2020) 14 SCC 552]



9. I have mulled upon the arguments advanced by both the parties and have given thoughtful consideration to the material placed on record.

10. Determining the parameters in granting anticipatory bail, Hon'ble the Supreme Court in **Bhadresh Bipinbhai Sheth vs State Of Gujarat** reported in **(2016) 1 SCC 152** after analyzing the entire law has observed as under: -

- (a) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (b) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (c) *The possibility of the applicant to flee from justice;*
- (d) *The possibility of the likelihood of accused to repeat similar or other offences;*
- (e) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (f) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (g) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*
- (h) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and*



full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

- (i) *The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (j) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*

11. Applying the afore-noted dictum to the instant case and after having heard both the sides at length and on perusal of the Case-diary as well as material on record, it appears *prima facie* that in certain cases, the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender.

12. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. Many a cheatings are committed in the course of commercial and also money transactions. Illustration "F" set out under Section 415 of the Indian Penal Code is worthy of notice:-



(F) "A" intentionally deceives "Z" into a belief that "A" means to repay any money that "Z" may lend to him and thereby dishonestly induces "Z" to lend him money, "A" not intending to repay it. "A" cheats."

13. In the present case, the complainant has stated in complaint that he was induced to believe that the respondent would honour payment and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods, did not pay the money. Proceed of the crime is amounting to the tune of Rs. 6,71,92,431.25. Such averments would *prima facie* make out a case for investigation by the authorities. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

14. In my view, since the case is at the threshold and the investigations are underway, it will be practically scuttling the investigation, in case the anticipatory bail is granted to the petitioners which would create hurdle in arriving at the truth. Prima-facie the petitioners herein are involved in a serious crime of huge amount.

15. In view of the aforesaid settled principles, the facts and circumstances of the present case and the case set up against petitioners in its entirety and the allegations leveled against the petitioners, this Court is of considered opinion that it is not a fit case for grant of pre-arrest bail to petitioners. The Court is not inclined to grant the anticipatory bail to the petitioners.



16. Consequentially, the present anticipatory bail application is accordingly dismissed.

17. It is clarified that whatever is discussed or observed hereinabove is only a *prima facie* view of this Court and shall not tantamount to any expression or opinion on the merits of the case.



(RAJENDRA PRAKASH SONI),J

Mohan/-