

Cri. Bail Appln. No.1232 of 2020

CNR NO. MHNS0100-3543-2020
(Rafik Imazuddin Shaikh Vs The State)

Order below Exhibit-1

1. Perused the application and say. Heard both the learned Counsels.
2. By this application under Section 438 of Cr.P.C., applicant-accused no.2 of CR No.466/2020 registered with the Nashikroad Police Station on 03.09.2020 under sections 467, 468, 471, 472 r/w.34 of Indian Penal Code seeks pre-arrest bail. It is objected over role attributed from the FIR.
3. Ld. Counsel for the applicant has submitted that, in fact, accused no.2 is the victim of misdeed of the complainant since accused no.1 was constrained to pay huge amount of Rs.2 crores 50 lacs. Accordingly, Promissory Note was executed in his favour. Present FIR is lodged only to give counter blast to the complaint lodged by the accused no.1 against informant on 03.08.2020 to Superintendent of Police, Nashik Gramin.
4. The learned A.G.P. had submitted that Notarized agreement was never executed by the complainant and thus there is no question of payment based thereupon.

5. On going through the documentary evidence, it is conspicuous that informant was assigned the contract by the Government about right of Fishery. Notwithstanding, the said agreement dtd. 19.02.2020 was not transferable, the informant on receipt of Rs.2 crores 50 lacs agreed to transfer it by way of Promissory Note.

6. The applicant has placed on record the copies of account extract distinguishing frequent transfer of huge amount against the Promissory Note and agreement executed in favour of accused no.1. The Promissory Note is Notarized with Adv.Heena P. Shaikh. The accused nos. 1 & 2 (applicant) are from Thane District. It is dtd. 12th December, 2010. Thus, there is presumption under section 85 of Indian Evidence Act.

7. The said Promissory Note has been acted upon and the accused no.1 has paid Rs.60,000/- against the project cost. When the dispute cropped in, the victim has executed two cheques of Rs.30,000/- each in favour of the company of accused no.1 "A.S. Agriculture & Acqua Ltd' dtd. 10.03.2020 and 26.03.2020. The record shows that both came to be dishonoured and consequences followed under section 138 of Negotiable Instrument Act. Also, on 03.08.2020 the accused no.1 had complained to Superintendent of Police as disclosed earlier, the copy

thereof is at Sr.No.9 to list. Subsequently, the present FIR came to be lodged on 03.09.2020. Timing thereof speaks volumes about genuineness thereof and apprehension in the mind of accused.

8. Pending hearing of this application, as submitted by learned Counsel for the applicant and there is no dispute by prosecution that the statement of applicant came to be recorded and he has handed over the copy of agreement, Promissory Note on 19.03.2020 which came to be seized by police.

9. It is necessary to note that, one attesting witness i.e. applicant on Promissory Note only has been impleaded as an accused while another, Prashant is set free for the reasons best known to the prosecution.

10. It is submitted on behalf of applicant that, numerous aggrieved persons being cheated by the informant has redressed their grievance to the police authority and the competent authority who accorded the contract to the informant. Consequent thereto, the contract of informant came to be cancelled and accorded to accused no.1 in due process of law. Record shows that it was taken otherwise by the informant and prosecuted the accused.

11. The record shows that the prosecution is handed over all the necessary documents capitalized by the informant, by accused no.1 pending hearing of this application meaning thereby, no custodial interrogations are warranting.

12. In views of above, apprehension in the mind of applicant of being humiliated, apprehended and manhandled seems to be reasonable warranting protection. Hence, order :-

ORDER

1. Application stands allowed.
2. Interim protection granted below Exh.4 dtd. 14.09.2020 stands confirmed.

Nashik
September 25, 2020

(Vikas S. Kulkarni)
Additional Sessions Judge,
Nashik.