

Ankit Sharma @ Anku vs The State Of Madhya Pradesh on 9 August, 2019

Equivalent citations: AIRONLINE 2019 MP 1759

1

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Single Bench : Hon'ble Shri Rajeev Kumar Dubey, J.

Misc. Criminal Case No.24924/2019

Ankit Sharma @ Anku

vs.

State of Madhya Pradesh

Shri Anil Khare, Senior Advocate with Shri Arpan Shrivastava
counsel for the applicant.

Shri M.K. Singh, Panel Lawyer for the respondent/State.

Shri Adama Bajpai, counsel for the objector.

ORDER

Reserved on : 07/08/2019 Delivered on : 09/08/2019 Case dairy perused and argument heard.

This is First application of the applicant Ankit Sharma @ Anku filed under section 439 Cr.P.C. for grant of bail. Applicant was arrested on 02.02.2019 in connection with Crime No.285/2018 registered at Police Station Cyber and High Technique Office, Bhopal for the offence punishable under Sections 419, 420, 467, 468, 120-B of IPC and Section 66 (d) of IT Act.

As per the prosecution case, on 16.10.2018 complainant Danish Khan lodged a written complaint at P.S. Cyber and High Technique Office averring that he was told by his college friend applicant Ankit Sharma @ Anku that he was a permanent employee at Honda Car Company Delhi and there the company makes an offer to its permanent employees to put a Honda City cab on hire in the company and company paid 60000/- per month as rent for that cab. Applicant Ankit Sharma asked him to put a cab in the Honda company and took a total of Rs.3800000 from him between the year 2016 to 2018. and in between he also returned some money to him stating that he was earning profit due to which his friend Mubsir Khan invested Rs.32,30,100 and Ankit Nigam invested Rs.20,70,000/- on the same assurance. Applicant's father Uttam Sharma, maternal uncle Anil Sharma and his son Visesh Sharma also assured the complainant that applicant was a permanent employee of Honda Company and he was posted as Assistant Engineer in the company. Sometime later, when they enquired from the Honda Company, they came to know that applicant Ankit Sharma did not engage cab with Honda Company. On that, they demanded their money back from applicant Ankit Sharma

@ Anku, who then showed complainant one website called hondasielcarslimited.com, logged in that by ID and password and showed agreement, salary slip, ID, purchase invoice, registration card and other cards due to which complainant Danish Khan, Mubsir Khan and Ankit Nigam paid money to the applicant by transferring money in his account by cheque and RTS in Kotak Bank and applicant took Rs.1 crore from the complainant Danish Khan and Mubsir Khan and Ankit Nigam, thereafter he denied to give that money back. Thus, he cheated the complainant Danish Khan, Mubsir Khan and Ankit Nigam. On that police registered Crime No.285/2018 for the offence punishable under Sections 419, 420, 467, 468, 120-B of IPC and Section 66 (d) of IT Act and investigated the matter and arrested the applicant on 02.02.2019.

Learned counsel for the applicant submits that applicant is innocent and has falsely been implicated in the offence. There is no evidence on record to show that the applicant prepared any fake documents. He further submitted that police seized as many as four agreements executed by the applicant and complainant Danish but in these agreements it is not mentioned that complainant gave money to applicant for purchasing a cab or for engaging the cab with Honda Company. So the fact that applicant took money from complainant on the pretext of buying Honda cab becomes false. Although, it is alleged that applicant had mailed some documents to complainant but the said documents were allegedly sent by the relatives of the applicant, so it cannot be said that applicant sent any forged documents to complainant. It is further alleged that the applicant showed forged documents to complainant by logging on website but police during investigation collected certificate from Google in which it is not mentioned that applicant logged that website on the said date. This report procured by the prosecution from Google too was not collected by the police according to Section 166 of IT Act so that document has no value. It is also clear from the evidence collected by the police during investigation that applicant also transferred some amount in the bank account of complainant Danish as profit which clearly shows that applicant contacted with complainant Danish for business and complainant gave money to applicant on the basis of agreement for business. There is no direct evidence on record to show that applicant executed agreement with bad intention. So, only on that basis that applicant could not repay the money to the complainant Danish Khan, Mubsir Khan and Ankit Nigam, offence under Section 420 of IPC is not made out against the applicant. The applicant is in custody since 02.02.2019 and the conclusion of trial is likely to take long time, hence prayed for release of the applicant on bail. In this regard, learned counsel also placed reliance on Apex Court judgments passed in Satishchandra Ratanlal Shah v. State of Gujarat and another reported in 2019 SCC Online SC 196, Anand Kumar Mohatta v. State (Govt. of NCT of Delhi) reported in 2018 SCC Online SC 2447 and Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Another reported in (2000) 4 SCC 168.

Learned counsel for the State as well as learned counsel for the objector opposed the prayer and submitted that applicant on the basis of forged documents took money from the complainant and Mubsir Khan and Ankit Nigam and cheated them and embezzled their amount of around Rs. 1 crore. So, he should not be released on bail.

The facts of the cases relied by the learned counsel for the applicant in Hridaya Ranjan Prasad Verma v. State of Bihar and another (supra), Anand Kumar Mohatta v State (Govt. of NCT of Delhi) (supra) and Satish Chandra Ratanlal Shah v State of Gujarat and another (supra) do not match with

the instant case. In these cases, the Hon'ble Apex Court only held that "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." while in this case, although in the agreement executed by the applicant with complainant Danish Khan, it is not mentioned that applicant took money from Danish Khan for buying car and engage it in the Honda company as cab but in these agreements it is mentioned that applicant took money from complainant Danish Khan to run transportation business while it is not the case of the applicant that he run any taxi service and suffered loss due to which he could not repay the money to complainant Danish Khan, Mubsir Khan and Ankit Nigam. So, these judgments do not assist the applicant.

It is alleged that applicant took money from the complainant Danish Khan, Mubsir Khan and Ankit Nigam on the pretext of investment in buying Honda cab and engage it with the Honda company but applicant never run any taxi business. It is not the case of the applicant that applicant run any taxi service and suffered loss due to which he could not repay the money to complainant Danish Khan, Mubsir Khan and Ankit Nigam so only on the basis that applicant returned some amount after agreement showing the profit earned from business to complainant Danish Khan, it cannot be said that from the beginning there was no intention of the applicant to cheat complainant Danish Khan, Mubsir Khan and Ankit Nigam. In the statements of complainant Danish Khan, Mubsir Khan and Ankit Nigam recorded by the police during investigation, it is mentioned that applicant took money from them on the assurance of investment in buying Honda cab and engage it with the Honda company while applicant never run any taxi business which prima-facie shows that the applicant committed fraud with the complainant Danish Khan, Mubsir Khan and Ankit Nigam. So, looking to the facts and circumstances of the case and the involvement of applicant in the crime and enormity of fraud, this Court is not inclined to grant bail to the applicant.

Accordingly, the bail application is hereby rejected.

(Rajeev Kumar Dubey) Judge