

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1351 OF 2016

Arun Subrao Kapse ... Applicant

Vs.

The State of Maharashtra .. Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.1281 OF 2016**

Abhijit Arun Kapse ... Applicant

Vs.

The State of Maharashtra .. Respondent

**WITH
CRIMINAL APPLICATION NO.604 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.1281 OF 2016**

District Co-operative Bank, Solapur ... Applicant

IN THE MATTER BETWEEN

Abhijeet Arun Kapase ... Applicant

Vs.

The State of Maharashtra .. Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO.1383 OF 2016**

Shri Pushkaraj @ Pushparaj-Changdeo Galande ... Applicant

Vs.

The State of Maharashtra .. Respondent

Mr.M.A. Choudhari, for the Applicant in all ABAs
Mr.Vinod Chate, APP, for Respondent – State
Mr.F.Saikh I/b M.V. thorat for Applicant in APPP/604/2016

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 9, 2017

P.C. :

1. The anticipatory bail applications have been filed under section 438 of the Criminal Procedure Code as the applicants/accused are facing charges under sections 420, 408, 409, 120B r/w section 34 of the Indian Penal Code in C.R. No.131 of 2016 registered with Vairag Police Station, District Solapur. One R.R. Gabne, gave complaint to the police on 2.6.2016. He was an employee of one District Central Cooperative Bank Ltd., Solapur. The applicant/accused in Anticipatory Bail Application No.1351 of 2016 moved an application for loan to the Bank for the purpose of launching a sugar/jaggery factory. The applicant/accused in Anticipatory Bail Application No.1281 of 2016 is the Managing Director of the said sugar factory and the applicant/accused in Anticipatory Bail Application No.1351 of 2016 is the Chairman of the said factory. They obtained loan initially for Rs.8 crores which was extended upto an additional Rs.5 crores in the year 2013. As

per the conditions of the loan, the entire product of the jaggery factory was hypothecated with the bank and it was agreed that immediately the sale proceeds will be deposited with the bank. However, the conditions were violated by the applicants/accused and no amount was deposited in the bank and, therefore, the bank initiated proceedings against the factory and sought order of recovery against the factory. When the bank people went to the factory on 3.5.2016 for the purpose of obtaining the jaggery powder and while they were taking the gunny bags of jaggery, on suspicion, they checked the bags and they found that in the gunny bags instead of jaggery, wood dust and candy coal were filled up and thus, the bank was cheated for Rs.8,10,52,000/-. Hence, a complaint was lodged against the Chairman, the Managing Director and one Shri Galande, a lab assistant, who are the present applicants/accused.

2. The learned Counsel for the applicants/accused has submitted that the applicant/accused in Anticipatory Bail Application No.1351 of 2016, who is the Chairman of the factory, is ready to pay the entire amount to the bank as a one time settlement. He submitted that as the bank is ready for one time

settlement, he has moved this application before this Court. He further submitted that the applicant/accused has issued six cheques and has paid Rs.4 crores to the bank till today. The learned Counsel further submits that the applicant/accused Abhijeet Kapse is the son of the applicant/accused-Chairman and has no role in obtaining the loan and therefore, the interim bail granted to them by order dated 9.8.2016 is to be confirmed. Similarly, he submitted that third applicant/accused Galande is working as a lab assistant and has played no role in obtaining loan or in the offence of cheating or criminal breach of trust, as alleged.

3. Both the learned Prosecutor and the learned Counsel for the intervener have opposed these applications. They have relied on the order passed by this Court on 15.12.2016 in Anticipatory Bail Application No.1351 of 2016 wherein the learned Judge of this Court has clarified that no interim bail was granted at any time to the applicant/accused in Anticipatory Bail Application No.1351 of 2016. It is further submitted that after the settlement talks, six cheques were issued by the factory in favour of the bank. However, although two cheques of Rs.1 crore each were honoured, the other three cheques of Rs.1 crore each were

dishonoured and so also one post-dated cheque of Rs.1.24 crore is yet to be presented. It is further argued that a total loan of Rs.13 crores was disbursed by the bank in favour of the factory and alongwith interest, an amount of Rs.28,97,00,000/- is due as on today.

4. Perused the order passed by my predecessor on 15.12.2016 and also the order rejecting the first Anticipatory Bail Application on 11.7.2016. Though there is a monetary transaction between the parties, it appears that the accused tried to mislead the bank by filling wood dust and coal candies instead of jaggery powder in the gunny bags. It appears that the agreed payments were also not made on due dates. Moreover, the first Anticipatory Bail Application was rejected in July, 2016. I, therefore, do not find any good ground to entertain this second bail application. Hence, the Anticipatory Bail Application No.1351 of 2016 is rejected.

5. The applicant/accused in Anticipatory Bail Application No.1281 of 2016 is working as a Managing Director of the Sugar/jaggery factory. He has filed a complaint against the bank for taking away the goods. However, as the cheques were issued

in the name of the factory in favour of the bank and three cheques were dishonoured, I am not inclined to continue the interim protection, hence, Anticipatory Bail Application No.1281 of 2016 is rejected.

6. In Anticipatory Bail Application No.1383 of 2016, interim bail was granted to the applicant/accused Galande who was working as a Lab assistant in the school and he is not a Director of the said factory. In the FIR, it is mentioned that he pressurised the godown keeper for directly selling the jaggery powder. Considering the admissions placed by this applicant/accused and the role in this offence, I confirm the pre-arrest bail granted to him on 11.8.2016 with the same surety and P.R. Bond and conditions. Accordingly, the Anticipatory Bail Application No.1383 of 2016 is allowed as per the terms and conditions hereinunder:

- i) In the event of arrest, the applicant/accused Shri Pushkaraj @ Pushparaj-Changdeo Galande shall be released on bail upon furnishing a P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount:
- ii) The applicant/accused shall not tamper with the evidence;

7. All the Anticipatory Bail Applications are disposed of accordingly.

8. In view of the disposal of the Anticipatory Bail Applications, nothing survives in the Criminal Application No.604 of 2016 for intervention and the same is disposed of as such.

(MRIDULA BHATKAR, J.)