

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

ANTICIPATORY BAIL APPLICATION NO.397 OF 2019

Vaibhav Chandrakant Koli

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Shivaji A. Masal, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. Bharate, API, Islampur Police Station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.05/2019 registered with Islampur Police Station under section 420, 406 r/w. 34 of IPC.

2. The FIR is lodged on 3/1/2019 by Dr. Sandeep Yadav. He has stated that he had treated the present applicant's father Chandrakant Koli in the year 2015. He got acquainted with him. Chandrakant was in the business of construction. He suggested to

the first informant that they could develop project which would give handsome profit to the informant. Chandrakant showed informant 12 guntas of land at Karad near Mauli Park, Karve Naka. The first informant showed interest. On 6/2/2016, Chandrakant and his other son Swapnil approached him and asked him to give money to start the business. The first informant from time to time collected money from his own savings and that of his family members. It is his case, that, he had sold his gold ornaments and had obtained loan. The FIR mentions that from time to time he paid Rs.30,14,000/-. He has also stated that one Naganath Patil was also cheated in a similar way. The accused had cheated the first informant as well as Naganath Patil to the tune of Rs.73 Lakhs. It is also mentioned in the FIR that the father of the applicant had obtained money on the pretext of giving better job to the first informant.

3. Heard Mr. Masal, Ld. Counsel for the Applicant and Smt. Takalkar, Ld. APP for the State.

4. Ld. Counsel for the applicant submitted that in the entire FIR there is hardly any material against the present applicant. He submitted that the chargesheet is filed in this case. The applicant's brother Swapnil is released on bail. Ld. Counsel for the applicant invited my attention to few statements in the chargesheet.

5. As against these submission, Ld. APP submitted that in the entire FIR, there is reference to one incident wherein the applicant had accompanied his brother Swapnil when they had approached the informant after the gold was repurchased from the jeweller Tarachand Khandelwal on repayment of loan. It is mentioned in the FIR that some gold ornaments were pawned by the first informant at their instance at SBI Islampur for which the informant was given Rs.2,96,000/- which was paid by him to the applicant and his brother in presence of one Naganath Patil. Apart from that, at every instance of dealing, the informant has named the applicant's brother and father. The FIR does not show that applicant had made any representation to the first informant that they could start a business together.

6. Ld. APP relied on supplementary statement of Naganath Patil recorded on 20/7/2019 much after the chargesheet was filed in March 2019. In the supplementary statement Naganath Patil has stated that the amount of Rs.2,96,000/- was given to the applicant and his brother in his presence. He has stated that he had accompanied the present applicant and his brother Swapnil to SBI where the informant had obtained loan of Rs.2,96,000/- against his gold. That amount was handed over to the applicant and his brother Swapnil. She therefore, submitted that the applicant's involvement is clear from the chargesheet.

7. I have considered these submissions. The FIR is mainly directed against the applicant's father and brother Swapnil. The representation for starting the business was made by the father of the applicant. Except for one instance, the father and brother of the applicant had approached the informant and had obtained money. It is the case of the informant that the gold ornaments were pledged with Khandelwal Jewellers and thereafter when they were taken back they were pledged with SBI at Islampur.

However, the statement of the said Jeweller shows that no such gold was ever pledged by the informant with him. Therefore, there is basic fallacy in the story of the informant concerning the applicant. However, at this stage, it will not be appropriate to observe any further in respect of handing over of amount of Rs.2,96,000/- by the informant to the present applicant. However, considering the entire allegations it appears that the offence was committed by the applicant's brother Swapnil and father Chandrakant. Only on one occasion, applicant was present when amount of Rs.2,96,000/- was handed over by the first informant to him and his brother. The statement is also not clear as to whom the amount was actually handed over. There is a general statement that the amount was handed over to them. Hence, at this stage, there is very little material against the present applicant showing his involvement. The supplementary statement of the Naganath Patil referred to hereinabove is recorded much belatedly after this issue was raised by the Ld. Counsel for the applicant. Therefore, at this stage, the applicant deserves to be released on anticipatory bail. His custodial interrogation is not

necessary though ofcourse he will have to co-operate with the investigation. Hence, the following order.

ORDER

- (i) In the event of his arrest in connection with C.R. No.05/2019 registered with Islampur Police Station, the applicant is directed to be released on bail on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The ABA No.397/2019 is disposed of.

(SARANG V. KOTWAL, J.)