

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

ANTICIPATORY BAIL APPLICATION NO. 370 OF 2018

Pankaj Prakash Masand

.... Applicant

Versus

The State of Maharashtra

.... Respondent

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- Mr. Kamlesh Jain, Advocate for Applicant.
 - Smt. A. A. Takalkar, APP for the State/Respondent.
 - WPSI K. S. Shinde, Koregaon Park P.stn. present.
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CORAM : SARANG V. KOTWAL, J.
DATE : 28th AUGUST, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.147/17 registered with Koregaon Park Police Station, on 12/08/2017 under sections 420, 406, 504 and 506 r/w. 34 of the Indian Penal Code.

2. At the outset, the learned counsel for the applicant states that pursuant to earlier order passed by this court, the applicant has attended the concerned police station and has co-operated with the investigation. Learned APP does not dispute this

statement. The FIR is lodged by one Jitendra Gosai on 12/08/2017. He stated that in September 2016 the informant got acquainted with the applicant and his wife Namrata. The applicant represented himself as a businessman having business of real estate. The relations were developed further between applicant and informant. In October, 2016 the applicant represented the first informant that they could rent a bungalow at Koregaon park and could start an Art gallery there. The applicant further told the informant that the rent could be fixed at Rs.1,40,000/-p.m. and deposit of R.7 lakhs was needed. He further represented that for obtaining NOC further amount of Rs.10 lakhs was needed, but he did not have that amount, he could get that amount by selling his other property, till then he wanted the informant to give that amount. The FIR further mentions that he gave Rs. 2,90,000/- to the applicant. The applicant gave a cheque issued by applicant's wife purportedly in refund of that amount, however, that cheque was dishonoured. The money was not refunded, no further transaction had taken place and informant was deprived of his money. The informant further came to know that three other

victims namely Mohit Singh Kushwah, Tarun Mishra and Nilesh Nil were similarly duped by the present applicant for various amounts, therefore, this FIR was lodged.

3. I have heard Mr. Kamlesh Jain, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

4. Learned counsel for the applicant submitted that the applicant's wife had already deposited Rs.2,90,000/- in this court while securing bail in ABA No.1735/17. He further submitted that the transaction between other alleged victims can not fall U/s.415 of IPC. These victims had not approached the police. He submitted that the applicant is available for investigation and did not abscond. Learned APP produced before me the papers of investigation. He submitted that dishonest intention of the applicant was clear from the facts mentioned in the FIR.

5. I have considered all these submissions. Besides FIR, I have perused statements of Alpana Nilesh Nil and Mohitsingh Kushwah in respect of cheating. Alpana has stated that in May 2016 the applicant had approached her and her husband. He projected that he was in dire need of money. Having seen his poor

financial condition, this witness and her husband had given Rs.5,50,000/- to the applicant. That money was not returned. They had suffered loss of that amount. The cheques which were given by way of refund had lost their validity because of lapse of time, except one cheque of Rs.3 lakh. Learned counsel for the applicant states that this witness and her husband have initiated civil proceedings against the present applicant.

6. The other witness Mohitsingh Kushwah has stated that he had seen the applicant playing in Casino and on his fervent plea he gave him Rs.1,50,000/-. That amount was not returned. Besides this, he gave him money on different occasions and in all Rs.7 lakhs were given to the applicant. The statement further mentions that this witness had agreed with the proposal of the applicant to play at Casino and for that the amount of Rs.2 lakhs given by this witness in hope to earn Rs.15 lakhs. This witness had given money to the applicant to use it in Casino. The third alleged victim has not come forward and has not made any grievance before the police in respect of the act of the present applicant.

7. Statements of these witnesses clearly show that the

applicant had requested for financial help stating his bad financial condition and that these two witnesses have given him money on humanitarian ground. Thus, it is difficult to hold that the applicant had made any false representation. Basically these witnesses have tried to help the applicant. The further act of the applicant of not refunding that money may not be proper but at this stage, custodial interrogation of the applicant may not be necessary because all these facts are already before the police. The statements of witness Alpana and Mohitsingh show that they had voluntarily helped the applicant. The applicant had not promised anything further except for repayment of money when his condition would be better. The witness Alpana has already initiated civil proceedings against him. These two witnesses knowingly gave money to the applicant because of his need and not because of any representation. So far as, allegations of the first informant are concerned, the amount of Rs.2,90,000/- is already deposited in this court when the wife of the applicant was granted anticipatory bail. Other victims themselves had not approached the police for their grievance and only during investigation their

statements are recorded. At the cost of repetition, it needs to be mentioned that both these witnesses had voluntarily tried to help the applicant. Undoubtedly, it was his duty to refund that money back, but it is rather difficult to observe that the applicant had in any manner compelled these victims to part with their money and made any false representation which could induce these victims to part with their money. There was no inducement offered, therefore, though the prosecution can continue, custodial interrogation may not be necessary.

8. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R. No.147/17 registered with Koregaon Park, Pune Police Station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (ii) The applicant shall attend the concerned Police Station on every alternate Saturday from 12.00p.m. to 2.00p.m. for a period of six months from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)