**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.1187 OF 2020**

1. Mr.Ashok Bhoplasingh Chaudhary
and another = **APPLICANTS**

**VERSUS**

The State of Maharashtra,
Through Police Station Parner,
Dist.Ahmednagar. = **RESPONDENT**

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Mr.NS Tekale, Advocate for Applicants;
Mr.SY Mahajan,APP for Respondent-State.

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**CORAM : SMT.VIBHA KANKANWADI,J.**
**DATE : 21st December, 2020.**

**PER COURT :-**

1. Present application has been filed for getting pre-arrest bail, as the applicants are apprehending their arrest in connection with CR No.618/2020, registered with Parner police station, District Ahmednagar, for the offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of IPC.

2. Heard learned Advocate Shri NS Tekale and

learned APP Shri SY Mahajan appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicants that the applicants do not know the informant. The applicants are residents of Bijnor in Uttar Pradesh; whereas the informant resides at village Aane, Tq. Junnar District Pune, and, therefore, there is no question of intention to cheat the informant. The applicants are husband and wife and they are the Trustees of the Trust, viz. "Hanumant Alwar Daviya Sthal Trust" situated at Jatangher, Rambaugh, Bijnor, UP (herein after referred to as the Trust). The said Trust has been registered with Sub-Registrar, City Bijnor. The Trust undertakes the work in the field of education, literacy, health, family welfare, housing, rural development and poverty eradication. The applicants were contacted by one Rajan Arora, who is resident of Bijnor and known to the applicants. It is stated that Trust in Maharashtra, viz. "Matoshri Shaikshanik Pratishthan", which is already running colleges and schools in the District of Ahmednagar, intends to

donate Rupees five crores to the Trust of the applicants. The informant had issued a letter dated 4.2.2020, expressing their support in construction of Higher Secondary School built by the applicants' Trust in Bijnor and thereafter issued another letter on 11.2.2020 for donation confirmation. Thereafter, the amount of Rupees five crores was transferred in the Bank account of the applicants' Trust on 15.2.2020. The applicants, however, shocked to receive a letter from their bank viz. IDBI Bank, branch Bijnor city, on 25.2.2020, requesting the applicants to maintain minimum balance of rupees five crores as they had received the letter from State Bank of India, Takli Dhokeshwar, Tq. Parner, District Ahmednagar for suspected fraud encashment/transaction. In fact, the applicants, without even a second thought, had deposited all the money into their Bank account within two days. The said amount is still in safe custody of their bank account and the said amount has been freezed by Cyber Police, Ahmednagar. Now, physical custody of the applicants is not at all required as they have never generated the disputed Demand Draft. Further, it can also be seen that there is delay of about six months for registration of the FIR from the date of knowledge of the informant, which has not been explained mysteriously by him. The entire story given in the FIR is impossible. The informant further says that he had intention to purchase the land and for that purpose, the amount was kept ready and the said land was to be utilized for construction of hospital. If it was in respect of land dealing then why precaution about clear title of the owner etc. has not been taken, is a question. Further, the conduct of the banks is also questionable. Certain guidelines have been framed by the Reserve Bank of India and stringent conditions/procedure has been contemplated for processing the Demand Drafts. Whether those stringent conditions/procedure were adhered to or not is also a question. The applicants are involved in social work and, therefore, they, believing in the statement of Mr. Rajan Arora, accepted the said amount in their Trust. They have not personally gained anything and on that count also, physical custody of the applicants is not required.

4. Per contra, learned APP objected to any grant of interim relief and submitted that the application deserves to be rejected at the threshold, taking into consideration that the amount involved in the transaction is huge and the *modus operandi* adopted is through the computers. The investigation is with the Cyber Cell of Economic Wing of Ahmednagar Police and they could trace out that the amount has gone to the account of the Trust of the present applicants. Even if we accept, for a moment, that the said amount of rupees five crores is, at present, freezed in the account of the applicants; yet the magnitude of the offence and the manner in which it has been committed, require thorough investigation. The learned APP also submitted that the matter is coming up for the first time and, therefore, he is not armed with the documents; yet on the basis of the order passed by the Additional Sessions Judge, rejecting the pre-arrest bail applications of the present applicants, he can say that pre-arrest bail has been rejected. But, the FIR and those documents, which were used by the applicants themselves, he can say that definitely more persons

are involved in the crime and the things would be more clear and revealed properly if the applicants are taken in custody.

5. At the outset, it is required to be impressed that relief, under Section 438 of Cr.P.C., is discretionary and certain parameters have been laid down by the Hon'ble Supreme Court in catena of decisions, which are required to be taken into consideration while granting such relief. The salutary provision, contained in Section 438, was introduced to enable the Court to prevent the deprivation of personal liberty. In other words, the object of this provision under Section 438 of Cr.P.C. is to prevent undue harassment of the accused person by pre-trial arrest and detention. However, the power under this Section is required to be exercised sparingly and only in deserving cases. The observations in *Adri Dharan Das Vs. State of W.B. - (2005) 4 SCC 303* are important, which are to the effect that, - "The power exercisable under section 438 Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person

may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of Cr.P.C.

6. Further, following factors and parameters have been set out by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra – (2011) 1 SCC 694*. They are as follows, -

> i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
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> ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
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> iii. The possibility of the applicant to flee from justice;
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> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
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> v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
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> vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
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> vii. The courts must evaluate the entire available material against the accused

very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

7. Further, a note of the decision, in respect of Economic offences, in the case of *Y.S.Jagan Mohan Reddy Vs. CBI – (2013) 7 SCC 439,* is required to be taken, wherein it has been observed, -

"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted

> conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

8. In the present case, it is to be noted from the contents of the FIR, which has been lodged by complainant – Kiran Laxman Aher, that he is the Secretary of Matoshri Shaikshanic Pratishthan. Through the said Trust, they run Engineering and Pharmacy colleges and School at Karjale Harya, Tq. Parner. They had intention to run a hospital and, therefore, they intended to purchase the land. He had talks with one Bhuvaneshkumar Sal r/o Delhi, who is a property agent. It is the say of the informant that in January 2020, he met the said property agent at Delhi; whereupon said person impressed that his client, who is having land in Pune district, intends to sell the said land. The location of the land was stated to be at Wagholi, Pune and they had then identified 40 gunthas land. He further states that after his visit to the site of the land, he met two Hindi-speaking persons and one Maharashtrian person and then he had seen

certain documents of the property. The deal of the land was fixed at Rupees five crores. One Advocate viz. Ajaysingh is also involved in the transaction. The informant then says that on the say of the Advocate, he took out a Demand Draft of Rupees five crores in the name of Hanumat Alwar Daviya Sthal, Bijnor and he had sent it through an e-mail. Accordingly, he had sent a scanned copy on the e-mail of said Advocate. But, thereafter, for certain days when there were no steps taken, he told the Advocate that he would cancel the Demand Draft and, therefore, he went to the Bank on 24.2.2020, where, he was informed by the Manager of the Bank that the said Demand Draft has been encashed/honoured. In fact, the informant says that since the original Demand Draft was with him and he, therefore, made enquiries as to how the Demand Draft could have been encashed. After the bank communication, he was informed that the Bank Manager at Bijnor has intimated that the said Demand Draft has been kept on hold and the amount would be re-transferred to his account. In spite of waiting for some time, he could not get his money back and, therefore, it appears that he has lodged the report.

9. The important point or aspect, which is involved in this matter, is that the original demand draft is with the informant himself and yet, it appears that, on the basis of the documents, those were prepared, the amount was withdrawn. Such kind of transaction requires a detailed investigation. The amount involved in the transaction is huge. The present applicants have come with a case that on the say of one Mr. Rajan Arora, they were impressed that the Trust, belonging to the informant, intends to donate the amount to them. The question then arose that when the applicants were not even knowing the informant or his Trust; yet how they could have come forward to give such huge amount as donation. Further, the applicants appear to have accepted that amount also, which appears to be against the provisions of the Public Trusts Act. When the huge amount is required to be accepted as donation, then necessary permission from the concerned Charity Commissioner is required to be sought. The conduct of the applicants, therefore, seems to be fishy and

dubious in the entire transaction, which requires discreet investigation and, therefore, at the threshold itself, case is not made out to grant any relief to the applicants.

10. In the result, the application stands rejected.

**(SMT. VIBHA KANKANWADI)**
**JUDGE**

BDV