

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

ANTICIPATORY BAIL APPLICATION NO.940 OF 2019

1. Mr. Prashant Manohar Devnani
2. Smt. Devika Prashant Devnani Applicants

Vs.

The State of Maharashtra & Anr. Respondents

Mr. Aabad H. Ponda i/by Karma Vivan for Applicants.
Ms. Sharmila S. Kaushik, APP for State of Maharashtra
Mr. Veerdhawal Deshmukh for Respondent No. 2.

Coram : NITIN W. SAMBRE, J.

Date : 5th August, 2021

P.C.:

1. The applicants, husband and wife are seeking pre-arrest bail in Crime No. 37 of 2016 punishable under Sections 406, 420 read with 34 of the Indian Penal Code, registered with Samata Nagar Police Station, Kandivali (East), Mumbai on 21st January, 2016 at the behest of one Rajesh Amrut Desai.

2. The case of the prosecution is, Complainant- Rajesh Desai was in friendly terms with the present applicants. With an intent to

assist the applicants-accused in purchase of residential flat on 8th June, 2011 handed over 1 Kg. gold, which was assured to be returned on/or before 31st March, 2012 with added 100 gms. Neither the gold was returned nor the amount was paid to the Complainant, the offence is alleged.

3. The submissions of Mr. Ponda, learned Senior Counsel appearing for the applicants are, the applicants are already ordered to be released on pre-arrest bail in Crime No. 528 of 2013, registered on 7th October, 2013 punishable under Section 406 of the Indian Penal Code at the behest of one Sharda Chaudhari. In the said offence, the complainant is cited as one of the witness. The statement of complainant in the said offence was recorded on 22nd October, 2013 narrating aforesaid transaction of 1 Kg. gold. In the statement recorded under Section 161 of the Criminal Procedure Code, the complainant Rajesh Desai has reserved his right to take appropriate steps after taking opinion of the legal experts and also common friend Shroff and the present applicants. He would further invite attention of this Court

to the order dated 13th March, 2015 passed in Anticipatory Bail Application No. 1522 of 2013 by the Court of Sessions for Greater Bombay ordering release of applicant No.1- Prashant Manohar Devnani, wherein the specific statement of Mr. Rajesh Desai is referred to. In the aforesaid backdrop, by drawing support of the judgment of the Hon'ble Apex Court in the matter of **T.T. Antony Vs. State of Kerala and Others**, reported in **(2001) 6 Supreme Court Cases, page 181**, he would urge that the present offence is in continuation of an earlier offence being Crime No. 528 of 2013 and that being so, the applicants cannot be arrested again in the present offence. His further contention is that he has specifically denied the deal in question as has been alleged by the complainant and relied on the entries in the Accounts, Balance-sheet to that effect.

4. Mr. Ponda would urge that the applicants are already protected by an order of this Court dated 18th April, 2019 (Coram : A.S. Gadkari, J.) and are enjoying ad-interim protection for more than two years and that being so, the custodial interrogation of the applicants is not required.

5. While countering aforesaid submissions, Mr. Veerdhaval Deshmukh, learned counsel appearing for Respondent No.2- Complainant assisted learned APP, Ms. Kaushik would urge that the account details of the complainant of the year 2011-2012 specifically reflects the aforesaid transaction. According to him, even if earlier offence being Crime No. 528 of 2013 was registered, the complainant has reserved his right to take appropriate steps in the matter. Learned counsel then would urge that the alleged offences against the applicants was not investigated into by the Investigating Officer as there was formal complaint from the complainant and that being so, the application is liable to be rejected.

6. Considered rival submissions.

7. The registration of offence against the applicant- Prashant Devnani being Crime No. 528 of 2013 for an offence punishable under Section 406 of the Indian Penal Code at the behest of Sharda Chaudhari is not in dispute. The statement of complainant, Rajesh Desai was recorded in the said offence under Section 161 of Criminal Procedure

Code and the said statement was referred to by the Court while granting pre-arrest bail to applicant No. 1 is not in dispute.

8. In that view of the matter, in my opinion, Mr. Ponda was justified in inviting attention of this Court to the judgment of the Hon'ble Apex Court in the matter of **T.T. Antony Vs. State of Kerala and Others** (Cited supra). Though Mr. Ponda has stated that the present offence is in continuation to the offence alleged in Crime No. 528 of 2013, however, without commenting on the merits of the matter, particularly when the statement recorded under Section 161 of Criminal Procedure Code of the complainant herein was not investigated into while the applicant was charge-sheeted in Crime No. 528 of 2013. Suffice it to say that the applicants have enjoyed interim protection from this Court for last more than two years, the nature of transaction appears to be the friendly one. The applicants have come out with a case of denial of such transaction.

9. It is not in dispute that the Complainant has already initiated civil suit for the issue as has been alleged in the complaint.

10. In the aforesaid backdrop, in my opinion, no purpose would be served by rejecting the application of the applicants as the transaction is claimed to be based on the account details of rival parties and also assurance given by the applicants.

11. Keeping right of the prosecution agency to investigate even the complaint of the complainant and to file if necessary supplementary charge-sheet in Crime No. 528 of 2013 or otherwise a separate one, in my opinion, the applicants deserve protection.

12. As such, ad-interim order passed by this Court on 18th April, 2019 stands confirmed. Hence, following order :

ORDER

i) In the event of arrest in Crime No. 37 of 2016, registered with Samata Nagar Police Station, Kandivali (East), Mumbai, for offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code, the applicants be released on bail on their executing P.R. bonds of Rs.25,000/-/- each with one or more sureties in the like amount;

- ii) The applicants are directed to attend the concerned Police Station on 23rd, 25th and 27th August, 2021 between 10.00 am. to 12.00 pm. and thereafter as and when directed;
- iii) The applicants shall not influence the prosecution witnesses or tamper with the evidence.

13. The application is disposed of accordingly.

(NITIN W. SAMBRE, J.)