

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

CRI. ANTICIPATORY BAIL APPLICATION NO. 1142 OF 2020

Parumeeta Vijan Chakravarti	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Mubin Solkar a/w. Mr. Aamir F. Sopariwala i/b. Mr. Navin Chomal, for the Applicant.
Mr. S. R. Agarkar, APP for the Respondent / State.

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**CORAM : C.V. BHADANG, J.
DATE : 8 DECEMBER 2021**

P.C.

. By this Application, the Applicant – Accused is seeking anticipatory bail, in connection with investigation of Crime No.273/2018 of Police Station Powai, Mumbai under Section 406, 418, 420, 423 r/w. Section 34 of IPC.

2. The aforesaid offence is registered on the basis of the complaint lodged by Suraj Jaiswal (since deceased), on 23 May 2018. The Applicant claims to be a businesswoman and she is in the business of travel and tourism and air ticketing etc. and is doing business under the name and style as ‘Parpen Group’. The

gravamen of the complaint lodged by Suraj Jaiswal is that the Applicant had assured to arrange for a loan of Rs.30 Crores to the Complainant who is dealing in sale and purchase of immovable property and of scrap. The Complainant was assured of the loan for his business purpose and as a security for the loan, an amount of Rs.4,16,93,323/- was accepted alongwith gold ornaments of Rs.12 Lakhs. According to the Complainant, it was represented to him that if the transaction of the loan does not materialise, the amount of the security deposit shall be repaid with interest @ 36% per annum. The promissory note was accordingly executed. However, neither the loan materialised nor the amount was returned as agreed. In short, according to the Complainant, he was cheated for an amount of Rs.4,16,93,323/-.

3. I have heard Mr. Ponda, the learned Senior Advocate for the Applicant and the learned APP for the Respondent / State. With the assistance of learned counsel for the parties, I have gone through the record.

4. Although, it was submitted on behalf of the Applicant that the dispute is essentially about some monetary transactions which is part of the business dealing and the dispute is predominantly of a civil nature, the main contention advanced on behalf of the Applicant is based on the decision of the Supreme Court in *Re: Contagion of*

*Covid 19 Virus in Prison*¹ and the order passed in *Munawar Vs. State of Madhya Pradesh and Ors.*²

5. It is submitted that this Court may pass order directing the Investigating Officer to give 72 hours notice if the Investigating Officer intends to arrest the Applicant, with liberty to the Applicant to renew the request for anticipatory bail. It is submitted that it is mandatory for the Investigating Officer to form an opinion about the necessity of arrest particularly in offences which invite a sentence of seven years and below. The learned Senior Advocate pointed out that the offence in the present case are punishable with maximum sentence of seven years and therefore the aforesaid judgments would apply. The learned counsel has also referred to the decision of the Supreme Court in *Arnesh Kumar Vs. State of Bihar and Anr.*³. Except this, there are no other contentions raised.

6. Learned APP has pointed out that the investigation is in progress and the Applicant except on couple of occasions has not attended the Investigating Agency. It is pointed out that the Investigating Officer has also made an attempt to serve a notice under Section 41 and 41-A of Cr.P.C. However, the Applicant was not traceable on the address given and therefore, the notice could not be served. Learned APP has pointed out that there are criminal

¹ *In Suo Motu Writ Petition (C) No.1/2020 2021 SCC Online SC 376*

² *(2021) 3 SCC 712*

³ *(2014) 8 SCC 273*

antecedents to the discredit of the Applicant as there are several similar cases registered in the State as well as in Gujarat, Karnataka and West Bengal.

7. I have carefully considered the circumstances and the submissions made.

8. According to the Complainant, he has been cheated of the amount to the extent of Rs.4,16,93,323/- for which the Complainant has referred to the Promissory notes and other documents. There are following similar cases / offences registered against the Applicant.

Sr. No.	Police Station	Crime No.	Offences under Section
1	Kolkata Bob Bazar Police Station	143/2007	420, 120(B) of IPC
2	Amboli Police Station Mumbai	106/2011	420, 406, 465, 468, 471, 472, 120(B) of IPC
3	DCB Police Station Vadodara Gujarat	11/2015	406, 420, 467, 468, 506, 120(B), 114 of IPC
4	Rabale Police Station Navi Mumbai	375/2015	420, 34 of IPC
5	Vadodara City Police Station Gujarat	28/2017	420, 406, 465, 471 of IPC

6	Udaygiri Mysore	53/2015	406, 420 of IPC, 156(3) of Cr.P.C.
7	Vartak Nagar Police Station Thane	180/2018	420, 120(B), 465, 467, 468, 471, 406, 504, 506 of IPC
8	Vartak Nagar Police Station Thane	694/2015	452, 354, 504, 506, 34 of IPC
9	MIDC Police Station Thane	298/2011	420, 465, 467, 474, 471, 381, 34 of IPC
10	Powai Police Station Mumbai	273/2018	420, 418, 423, 406, 34 of IPC
11	Powai Police Station, Mumbai	29/2019	406, 420, 465, 467, 468, 470, 471, 34 of IPC.

9. It is pointed out that offences registered in Gujarat and Karnataka have been quashed on the basis of the Consent Terms with the respective Complainants. Be that as it may, *prima facie*, the fact remains that there are other similar offences registered against the Applicant in the State.

10. Both the decisions on which reliance is placed on behalf of the Applicant are based on the decision of the Supreme Court in *Arnesh Kumar*. In the case of *Arnesh Kumar*, the Supreme Court has inter alia held that the police officers cannot automatically arrest and they are required to satisfy themselves about necessity for arrest under the parameters, flowing from Section 41 of Cr.P.C. Although, the case of *Arnesh Kumar* arose out of an offence under Section

498-A of IPC and Section 4 of the Dowry Prohibition Act, the Supreme Court in para 12 of the judgment, has clarified that the directions as set out in para 11 of the judgment would also apply to such cases where the offence is punishable with a term upto seven years, whether with or without fine. The decision in effect requires the police officer to apply mind about the necessity of arrest and to issue notice under Section 41-A of Cr.P.C. to the Accused.

11. In the present case, as noticed earlier, learned APP has submitted that an attempt was made to serve a notice of which a copy was tendered across the bar and it could not be served as the Applicant was not available on the address. In this regard, I have also perused the case diary. Thus, *prima facie*, it appears that the requirement as laid down in *Arnesh Kumar* has already been satisfied in this case at the end of the Investigating Officer. As noticed earlier, except this, there are no other contentions raised. Considering the over all circumstances and the nature of the offences, in my considered view, no case for grant of pre-arrest bail is made out. In the result, the Criminal Application is rejected.

12. At this stage, Mr. Solkar, the learned counsel for the Applicant, on instructions, sought leave to withdraw the Application with a request to grant reasonable time to the Applicant to surrender as she is suffering from various ailments including severe diabetes.

Learned counsel for the Applicant submitted that the Applicant would file an undertaking to that effect within one week.

13. Considering the fact that Application was heard at length and the order has already been dictated, withdrawal in my considered view cannot be permitted. However, considering the medical condition of the Applicant, and the fact that interim protection was operating from 6 December 2019, she is granted three weeks time to surrender before the Magistrate / Investigating Officer subject to the condition, that the Applicant shall file an undertaking to that effect before the Registrar (Judicial) of this Court within one week from today. In the event, the undertaking is not filed, the order granting time shall stand vacated without reference to the Court.

14. It is made clear that the observations herein are of a *prima facie* nature for the limited purpose of deciding the Application for pre-arrest bail and shall not bind the Investigating Authority / Court in subsequent investigation / trial, if any.

C.V. BHADANG, J.