

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

ANTICIPATORY BAIL APPLICATION NO.2272 OF 2021

Satish Bhupatbhai Kanani Applicant

versus

State of Maharashtra Respondent

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- Mr.Ghanshyam Upadhyay i/b. Rakesh Singh, Advocate for Applicant.
- Mr.Y.M. Nakhwa, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 23rd SEPTEMBER, 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.451/2020 dated 16/11/2020 registered with Kamothe Police Station, under sections 420 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Sagar B. Suraj Singh. He has stated that he has completed his MBBS degree in the year 2017 and he was practicing as a doctor. He wanted to take further

education for MS surgery and he had filled a form on a website for the same. Some consultants used to contact him and his mother through telephone. On 09/08/2020, his mother received a mobile phone call from an unknown number. The caller told the informant's mother that he was calling from Pune, Maharashtra and that he was in a position to get a seat at MGM Collage, Kamothe, Navi Mumbai, for post-graduation. But for that purpose he was required to pay fees of Rs.1 Crore. He gave his name as Premji. On 10/08/2020 again he called and at this time he demanded Rs.90,00,000/-. The informant's mother accepted the offer. The caller told her to send the informant's documents on whatsapp. On 11/08/2020 again the informant's mother received a phone call. That time the caller gave his name as Dr.Vishal Patil. He told her that the seat was confirmed and that they should complete the procedure before 03.00 p.m. on 12/08/2020. The informant and his parents started for Navi Mumbai. In car during their travel they again received a call from Premji that he was busy and one Pankaj would meet them at the collage. Accordingly when the informant and his parents

reached MGM college, they called the phone number given to them which was purportedly that of Pankaj. At that time, two persons claiming to be Pankaj and Sagar came there. They took them to meet Dr.Vishal Patil. He in turn demanded Rs.23 lakhs. On 13/08/2020 aforementioned Pankaj brought a brown coloured leather bag. The informant and his parents kept Rs.15 lakhs in cash and DD for Rs.23 lakhs issued in the name of 'MGM Institute of Health Science' in that bag. In addition, the informant paid Rs.1 lakh to Pankaj and Sagar by way of consultation fees and thereafter the informant and his parents went back to Hyderabad. However, thereafter nothing was done. The informant did not get the medical seat. The informant's father cancelled the DD. But they lost Rs.15 lakhs, which was given in cash. On this basis, FIR is lodged.

3. Heard Mr.Ghanshyam Upadhyay, learned counsel for the Applicant and Mr.Y.M. Nakhwa, learned APP for the State.
4. Learned counsel for the Applicant submitted that the

Applicant's name is not mentioned in the FIR. In the entire charge-sheet there is no whisper about the Applicant's role except mentioning that he was absconding. He submitted that there are vague allegations in the charge-sheet. He submitted that though the remand report mentions some confession of the co-accused, that confession is inadmissible and cannot be the basis for arresting the Applicant. On propositions of law he submitted that, though in a case of non-bailable offence, it was lawful to arrest the accused, but there had to be some material against the accused necessitating arrest. In every case accused need not be arrested and the investigation can still go on.

5. Learned APP on the other hand relied on the statement of co-accused Iftakar Mushtaq Ahmad and Mahesh Haribhai Italiya recorded during the investigation. Iftakar has given a detailed statement showing how the offence was committed. He has stated that he has a hotel named 'Bombay Biryani' at New Delhi. Besides this business, he was also doing job of getting admission for needy students from different countries. For that,

he has started his consultancy by the name 'Front Row Pvt. Ltd.'. He was also instrumental in getting admissions to students in the engineering and medical colleges in Maharashtra. He has stated that the present Applicant Satish Kanani was his friend and he was also in the same field of getting admission in medical colleges. The Applicant had told this co-accused Iftekar that if anybody wanted admission for medical course, he was in a position to get admission in MGM college at Kamothe. Iftekar in turn told him that there were two parties who wanted admission. One of them was the first informant. The Applicant promised that he would get admission for these two parties. He told Iftekar to call those students to Navi Mumbai. Iftekar was also called to Navi Mumbai. Accordingly Iftekar told the first informant to come to Navi Mumbai. Iftekar himself stayed at Hotel Center Point, Navi Mumbai. The Applicant met him there. He was accompanied by one Randhir Subramanyam. The Applicant told Iftekar that Iftekar would meet two other persons. They along with Randhir would complete the job of admission for post-graduation course. On the next day Iftekar and the

Applicant himself reached MGM Medical College. Randhir was already there and there were other two persons. The Applicant introduced them as Rahesh Guha and Mahesh Italiya. The Applicant told Iftekar to change his name as 'Pankaj Kumar'. The Applicant told him that Rajesh Guha would represent to the parties that he was 'Dr.Vishal Pawar' and that he would finalize the deal with the parties. The co-accused Iftekar thereafter has described the incident which is narrated in the FIR. The amount was actually accepted by Mahesh. The Applicant himself gave Rs.2 lakhs as commission to this co-accused Iftekar. Subsequently, Iftekar came to know that the Applicant had not done the job and had not returned the money to the parties.

6. Similar is the statement of another co-accused Mahesh who has corroborated the story of Iftekar regarding the discussion with the party in the parking lot of MGM Hospital. He himself did not narrate about his further part. Mahesh has stated that the Applicant had informed him about this admission for a medical seat.

7. I have considered these submissions. At this stage, there is sufficient material in the form of statements of these two co-accused. They have described the role of the present Applicant, who was the master mind behind this fraud. The amount was misappropriated by the present Applicant. Thus he is the main accused.
8. Learned counsel Mr.Upadhyay submitted that the parameters of bail and anticipatory bail are similar and he relied on the case of *Davidas Raghu Naik Vs. The State, as reported in MANU/MH/0020/1987*. The order was passed by Single Judge of this Court on 14/09/1987 in Criminal Misc. Application No.122 of 1987. Learned counsel submitted that the confession of co-accused is inadmissible and cannot be used against the present accused. Mr.Upadhyay also relied on many judgments of Hon'ble Supreme Court in support of his case. They are as follows -

- *Joginder Kumar Vs State of UP & Ors. as reported in MANU/SC/0311/1994.*
- *Jagannath Vs. State of Maharashtra, as reported in MANU/MH/0017/1981.*
- *Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab, And Sarabajit Singh & Anr. Vs. State of Punjab, as reported in AIR 1980 SC 1632.*
- *Som Mitthal Vs. Govt. of Karnataka, as reported in AIR 2008 SC 1126.*
- *Lal Kamlendra Pratap Singh Vs. State of UP & Ors., as reported in (2009)4 SCC 437.*
- *Siddharam Satishlingappa Mhetre Vs. State of Maharashtra, as reported in AIR 2011 SCC 312.*

9. All these leading judgments have laid down parameters for consideration of grant or refusal of anticipatory bail. As submitted by Mr.Upadhyay these judgments do laid down that unless there is justification for arrest of a person, he should normally not be arrested.

10. In Siddharam Mhetre's case (supra) at paragraph No.122, the parameters are laid down, which are as follows;

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- 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;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences;
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

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, 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 to 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.”

11. In Joginder Kumar’s case (supra) it was observed that the police officer must be able to justify the arrest.

This proposition is followed in many other judgments.

12. I have considered material placed before the Court as well as the law referred to by Mr.Upadhyay. While it is true that confession of co-accused or accused before police would be inadmissible for the purpose of trial and even can be left out for purpose of consideration of bail application, however at the stage of consideration of grant or refusal of anticipatory bail, it is the material derived from the investigation and therefore it gives lead to the police officers to carry out effective investigation. In

this case as mentioned earlier, the statements given by Iftekar and Mahesh spell out the main role played by the present Applicant. Therefore it would be travesty of justice if the investigation is not carried out effectively in the absence of custodial interrogation of the Applicant. The police officers are not acting on some vague information, but there is a concrete material which is corroborated by the FIR itself.

13. Therefore in my opinion, the investigating agency has made out the case for arrest of the Applicant. The Applicant's custodial interrogation is necessary in the background of the above discussion. The application therefore is rejected.

(SARANG V. KOTWAL, J.)