

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPLICATION BAIL NO.23 OF 2022

MOHAMMAD HAFEEZ C.S. SHAFI ...Applicant.
VS
STATE AS REP. BY OFFICER IN
CHARGE/POLICE INSPECTOR AND 2
ORS ...Respondents.

Mr. K. Poulekar and Mr. Y. Kotkar, Advocates for the applicant.
Mr. S. G. Bhobe, Public Prosecutor for the respondents.

CORAM: G. S. KULKARNI, J.
DATE: 7 SEPTEMBER 2022

P.C.:

1. The applicant is seeking a transit anticipatory bail in connection with offence registered at the Aluwa Police Station Kerala being FIR No.1072 of 2022 alleging offences punishable under Section 406, 419, 420, 468, 471, 120(b), 498-A read with Section 34 of the Indian Penal Code.
2. The applicant's case is that he is presently residing at H. No. PMC/WS, 204/19(1), Khadpaband, Ponda Goa, which is the address also appearing on the election card issue in favour of the applicant.
3. The applicant has contended that on 25.8.2022, the applicant

learnt that the officer incharge of Aluwa, Police, Kerala Station had registered an FIR in question against him and his parents Shafi and Isha Beevi, and his friend/employee by name Akshay. Copy of the FIR was thereafter procured by the applicant, when it was revealed that such FIR was lodged by his father-in-law Abdul Lahir Hassan *inter alia* recording that the applicant married the complainant's daughter Hazira on 22.01.2017. That the applicant and his parents demanded additional dowry and mentally harassed complainant's daughter on various occasions. It is also alleged that the applicant along with Akshay had conspired and created fake documents. It is also alleged that the applicant had collected 92 crores from the complainant from July 2018 to March 2022 and, out of such amount, an amount of 6 crores was transferred to the company account of the applicant's parents.

4. It is the case of the applicant that a false and fabricated case is sought to be made out in the FIR by the applicant's father in law/Complainant. It is also the applicant's case that after his marriage to the daughter of the complainant, the complainant himself had come up with an investment proposal and asked the applicant to invest his money in India in various businesses which would be run by the

applicant and his daughter. The applicant agreed to such a proposal of the complainant, who invested an amount of Rs.30 crores in various businesses wherein the applicant and his wife were partners. However, due to COVID pandemic, the business as operated by applicant and his wife collapsed, and the applicant and his wife suffered severe losses. It is the case of the applicant that sometime in February 2022, the complainant started demanding the amounts which he had invested in the business of the applicant and his daughter. The applicant however, informed the complainant that he cannot make payment of such investment as the businesses were not doing well.

5. It is the applicant's contention that being not satisfied with the response of the applicant, the complainant threatened the applicant with dire consequences including kidnapping his daughter and his son. It is the applicant's case that the complainant had also made him sign an agreement and had taken 10 post-dated cheques of 9 crores each, although the complainant was aware that the applicant does not owe 90 crores to him, nonetheless such cheques were got issued by the applicant.

6. It is also the applicant's case that the complainant has kidnapped

his son as also has taken away his wife from him and they have been detained by the complainant in Dubai. On 26.8.2022, the applicant, learnt that the officer from the Aluwa Police Station was searching him at his native place Kasargod Kerala to arrest him. The applicant states that so far he has not received any notice under Section 41 A of the Cr.P.C in connection with FIR. The applicant apprehending that he would be arrested in connection with the said FIR by the officer of Aluwa Police Station Kerala, (respondent no.1), the applicant has approached this Court by the present application. The applicant states that he is ready to cooperate with the investigation and accordingly has prayed that he be granted transit bail so that he can approach the appropriate Court in Kerala and file a plea for anticipatory bail. In support his submissions, learned Counsel for the applicant has placed reliance on the following decisions:-

1. *Nikita Jacob Vs State of Maharashtra, (Anticipatory Bail Application No. 441 of 2021)*
2. *Javed Anand Vs State of Gujarat (Anticipatory Bail Application No. 627 of 2018)*
3. *Ketan Kanakia Vs State of Goa (Criminal Misc. Application (Bail) Nos.748 and 749 of 2021-F)*
4. *Shubam Kar Chaudhari Vs The State of Goa, thr. Public Prosecutor and anr. (Criminal Application (Bail) No. 35 of 2021.*

5. *Shantanu Shivlal Muluk Vs State of Goa (965 Anticipatory Bail Application No. 154 of 2021)*
6. *Ahamed Shafi C. M. Vs State of Kerala (Bail Appln. No. 6758 of 2022)*
7. *State of Gujarat Vs Javed Anand & Ors. (SLP Cr.No. 3135/18)*
8. *Teesta Atul Setalvad Vs State of Maharashtra and ors. (Application No.14/14)*
9. *Teesta Setalvad Vs State of Maharashtra and ors. (SLP Cri. No. 1770/14)*
10. *N. K. Nayar & Ors. Vs State of Maharashtra and ors (MANU/MH/0534/1995)*

7. Relying on the such decisions the learned Counsel for applicant submits that it is well settled that the Court's considering the facts of the case before it in the interest of the liberty of the applicants who file proceedings to seek an anticipatory transit bail, have been exercising jurisdiction under Section 438 of the Cr.P.C. in granting transit bail.

8. It is also contended that the Supreme Court in its order in the case of *State of Gujarat Vs Javed Anand and ors. (SLP Cr.No. 3135/2018)* considered an order dated 5.4.2018 passed by this Court in Anticipatory Bail Application no. 627 of 2018 and has recognized the orders of transitory bail granted by the High Court, when the Supreme Court has made the following observations:-

Being an interim transit bail, we make it clear that its life as granted by the High Court of Judicature at Bombay is limited upto 31st May, 2018. It is for the respondent Nos. 1 and 2 to approach the competent forum in the State of Gujarat, within the said period for further appropriate relief. Needless to say that the forum concerned will consider the matter on its own merit.

The impugned order passed by the High Court of Judicature at Bombay will stand clarified to the above extent. The Special Leave Petition is disposed of as above. Pending applications, if any, also stand disposed of.

(Emphasis added)

9. With the assistance of learned Counsel for the applicant, I have perused orders which are passed by the Co-ordinate Benches of this Court in the case of ***Nikita Jacob***(supra) and in the case of ***Javed Anand*** (supra) in which the Court considering the prior decisions of the Division bench of this Court reported in ***N. K. Nayar*** (supra) and also noting the orders passed by the Supreme Court in ***Sandeep Sunilkumar Lohariya Vs Jawahar C. Bijlani & Ors. (SLP Cri No. 4829/13) dated 14.06.2013***, as also the judgment of the Supreme Court in the case of ***State of Assam Vs Barak Upatyaka D. U. Karmachari Sanstha (2009) 5 SCC 694*** also in ***Dr. L. R. Naidu Vs State of Karnataka, 1984 Cr. L. J. 757*** and the decision of the

Calcutta High Court in ***B. R. Sinha Vs State, 1984 Cr. L. J. 61***, had exercised jurisdiction under Section 438 and has granted an anticipatory bail in transit.

10. It would be apposite to note the following observations of the Co-ordinate Bench of this Court in paragraph 11 in ***Javed Anand's case*** (supra). Justice Revati Mohite Dere observed thus:-

It is pertinent to note that Section 438 enables a person to apply for anticipatory bail. No doubt, generally the powers of the High Court in anticipatory bail are limited to its territorial jurisdiction and the said powers cannot be usurped by disregarding principles of territorial jurisdiction, which is in the interest of the comity of the Courts, however, there may be cases, where, if the said protection is not granted, the liberty of an individual would be jeopardised.

11. Also, learned Single Judge of this Court (Manish Pitale, J) in the case ***Ketan Kanakia*** (supra) accepted the above position in law having noted a decision of another above and also Co-ordinate Bench of this Court (M. S. Jawalkar, J) in ***Shantanu Shivlal Muluk*** (supra) when the Court exercised jurisdiction under Section 438 of the Cr.P.C by allowing an application for a transit bail. It is thus clear that although a contention was raised before the Co-ordinate Benches of this Court, more particularly, as observed by the learned Single Judge

in *Nikita Jacob*(supra) case and in *Javed Anand's case* (supra) posing a question as to whether the Court would have jurisdiction to exercise such powers under Section 438 of Cr.P.C. and more particularly, in view of the observations made by the Supreme Court in the *Sandeep S. Lohariyai* (supra) in *SLP 4829/13*, both the co-ordinate Benches have considered such orders passed by the Supreme Court to be interim orders passed by the Supreme Court observing that the observations as contained in the said orders were confined to the facts of such case. It was also observed that the position in law was clearly seen to be consistent from the different views taken by the Court, including the Supreme Court in case of *Teesta Setalvad* (Supra) which recognise such jurisdiction of the Court to grant transit bail.

12. In my opinion, considering the facts of the present case, although the power of this Court in anticipatory bail applications would be limited to its territorial jurisdiction and such powers cannot be extended beyond the such territorial jurisdiction of this Court, which is in the interest of the comity of the Courts, however, considering the fact that the liberty of the applicant ought not to be jeopardised so that he would be in a position to effectively take the recourse to the remedy available to him in law, by approaching the

appropriate court for a relief, on his apprehension of an arrest in connection with the FIR in question. Thus, the present application would be required to be allowed. Hence the following Order:-

- i In the event of the arrest of the applicant, the applicant is granted transit bail till 30.9.2022 on executing a P. R. bond in the sum of Rs.50,000/- with one or two surety in the like amount.
- ii The application shall not act in any manner which will prejudice the investigation being carried out by the concerned investigating officer in connection with the FIR No. 1072 of 2022.

13. Application is accordingly disposed of in the aforesaid terms.

14. Parties to act on the authenticated copy of this order.

G. S. KULKARNI, J.