

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

**INTERIM APPLICATION NO.765 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.225 OF 2021**

Amit Vijay Bhatevara

...Applicant

Versus

1) The State of Maharashtra
2) Smt. Sunita Pandurang Shinde
3) Natesh Pandurang Shinde

...Respondents

...

Mr. Ajinkya Badar for the Applicant.

Ms G.P. Mulekar, APP for Respondent No.1-State.

Mr. Ramakant Paranjape for Respondent Nos.2 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 30th AUGUST, 2022.

P.C.:-

1. Not on board. Upon being mentioned on the ground of urgency, taken on board.

2. This is an application for cancellation of bail granted to Respondent Nos.2 and 3 in Anticipatory Bail Application No.225 of 2021.

3. Respondent Nos.2 and 3 had filed Anticipatory Bail Application No.225 of 2021 apprehending their arrest in Crime No. 101

of 2020 registered with Wanwadi Police Station, Pune (city) for the offences punishable under Sections 406, 420, 465, 467, 468, 471 r/w. 34 of the IPC.

4. The records reveal that Respondent Nos.2 and 3 were granted interim protection by order dated 28/01/2021 in view of the statement made by the Respondent Nos.2 and 3 that they are ready and willing to return an amount of Rs.1 crores 10 lakhs received by them in the transaction. The said statement was accepted as a pre-condition for grant of interim bail. The records reveal that Respondent Nos.2 and 3 did not comply the said statement. On 24/08/2021 when the matter came up before this Court (Coram : Bharati Dangre, J.) Respondent Nos. 2 and 3 filed an undertaking before this Court. Clause (3) of the said undertaking, which has been reproduced in order dated 24/08/2021, reads thus:-

"3. Without prejudice we hereby undertake to refund and/or pay the Complainants as under :

- a. Entire received consideration amount of Rs.1,10,00,000/- One Crore Ten Lakhs only*
- b. Pay the additional amount of Rs.20,00,000/- Twenty Lakhs incurred towards payment of Stamp Duty and Registration fees of subject matter Sale Deed*

dt.14thSeptember 2017, upon execution of sale Deed and documents consenting for withdrawing the complaint or for quashing the F.I.R.. That if the complainants get the same refunded from the Registration authorities, they should refund the same to the Accused hereinabove.

.i.e. Total Rs.1,30,00,000/- One Crore Thirty Lakhs only to Mr.Amit Vijay Bhatevara and Mr.Suhas Moreshwar Kunte as per their respective shares in it, by depositing the same with the office of this Honorable Court or as directed by this Honorable Court, within 05 months from the date of execution of the Consent Terms by all the parties, towards full and final settlement of the subject matter complaint."

5. The Applicant herein, who is the Complainant in the said crime accepted and agreed to receive the amount as per the terms and conditions contemplated in clause (b). The Applicant/Complainant pressed for execution of deed of cancellation, stamp duty in respect of which was to be borne by Respondent Nos.2 and 3. Learned counsel representing Respondent Nos.2 and 3 made a statement that deed of cancellation would be executed within one month from the date of

receipt of the payment. Accepting the statement made by Respondent Nos.2 and 3, this Court confirmed the interim relief with directions to the parties to appear before the Investigating Officer and informed him about the said understanding arrived at between the parties.

6. Pursuant to the said undertaking and after passing of the order, the parties also entered into consent terms dated 01/10/2021. As per the said consent terms Respondent Nos.2 and 3 were required to make the payment on or before 01/02/2022. It is stated that till 01/02/2022 Respondent Nos.2 and 3 had paid only an amount of Rs.28,00,000/- out of an amount of Rs.1,30,00,000/-. Since the entire amount as agreed was not paid, deed of cancellation has not been executed.

7. It is thus evidence that Respondent Nos.2 and 3 have committed total breach of an undertaking given before this Court, on the basis of which they were granted pre-arrest bail. The records also reveals that notice issued to the Respondents were returned unserved despite specific directions to the Investigating Officer to ensure service of notice upon Respondent Nos.2 and 3 and to secure their presence before the Court. Considering this aspect, this Court directed to issue non bailable warrant of arrest against Respondent Nos.2 and 3 and to

produce them before this Court. Despite the said order presence of Respondent Nos.2 and 3 could not be secured. Hence, this Court (Coram : Prithviraj K. Chavan, J.) by order dated 18/08/2022 issued show cause notice to the DCP Zone-V, Pune as to why legal action should not be initiated for not complying with the directions. It was only after this order that presence of Respondent No.2 could be secured. He was arrested on 28/08/2022 and produced before the Magistrate and remanded to magisterial custody. It is stated that after issuance of warrant the Respondent No.2 had paid some amount. The total amount paid as on date is stated to be Rs.48,00,000/-.

8. Mrs. Namrata Ganesh Patil, Deputy Commissioner of Police, has filed her affidavit stating that the Respondent Nos.2 and 3 are not residing at the address mentioned in the bail bonds. It is stated that Flat No.137, A wing, Anupama Society, Thane -West was sold to Mehul Kishor Joshi in the year 2015. The Respondent Nos.2 and 3 could not be located and their location was traced after tracking their mobile phone location. The Respondents would switch off their phone and keep changing their residence and hence could not be arrested.

9. The records thus reveal that Respondent Nos.2 and 3 have not only failed to abide by the statement, based on which they had

secured pre-arrest bail but had evaded service and failed to appear before this Court. The conduct of Respondent Nos.2 and 3 as well as clear breach of the undertaking given before this Court, based on which pre-arrest bail was granted, would not justify continuation of bail. Hence, pre-arrest bail granted to Respondent Nos.2 and 3 by order dated 24/08/2021 in Anticipatory Bail Application No.225 of 2021 is cancelled. Respondent No.3, be produced before the concerned Magistrate for further order of remand.

10. Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)