

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2123 OF 2022

Rakhi Rajesh Mewawala ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. Niteen Pradhan i/by Ms. S.D. Khot, Advocate for the Applicant.

Mr. Dhrutiman S. Joshi, Advocate for the First Informant/Intervenor.

Ms. P N. Dabholkar, APP for the Respondent – State.

Mr. Shivanand Aapure, PSI, Mulund Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th NOVEMBER, 2022.

PER COURT:

1. This is second application for anticipatory bail before this Court. The previous application viz. Criminal Anticipatory Bail Application No.187 of 2019 was rejected by this Court vide order dated 30th January, 2019.

2. The applicant is apprehending arrest in C.R. No.614 of 2018 registered with Mulund Police Station for offence punishable under Sections 406 and 420 r/w 34 of Indian Penal Code (for short 'IPC') and Section 3 of Maharashtra Protection of Interest of Depositors Act, 1999 (for short MPID Act, 1999).

3. It is alleged that in April, 2016, the accused No.1 Rajesh Mewawala and Shri Jayesh Thakkar had visited the residence of the complainant. Shri Mewawala had stated that he has two

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2022.12.01
14:03:55 +0530

SUNNY
ANKUSHRAO
THOTE

concerns namely Fountain Spring Water Pvt. Ltd. and Fountain Dry Fruit stores through which he is conducting business. Thereafter he had frequently visited the residence of complainant. In April, 2016 Mr. Mewawala stated that he is accepting the money on interest basis and if the complainant invest the amount he would provide interest of 18% p.a. Considering the status of Shri Mewawala, the complainant believed his representation. On 29th April, 2016, Mr.Mewawala, his wife Rakhi and daughter Masumi had visited the house of complainant. All of them represented that in the event the complainant invests the money in their concern 18% interest would be provided to the complainant. It was also stated that Mr. Rajesh Mewawala and his wife Rakhi are Directors of Fountain Spring Water Private Limited. They further represented that if the complainant invested an amount of Rs.12.5 lakhs in their concern by providing interest of 18% p.a. she would get an amount of Rs.15,00,000/- in April, 2017. Being influenced by the representations, the complainant, her relative and friend parted an amount of Rs.12.5 Lakh to Rajesh Mewawala and Masumi Thereafter, the accused frequently visited the house of the complainant. On enquiry about the returns receivable by the complainant she was informed that same would be provided to her in April, 2018 with interest and she would been titled to receive an

amount of Rs.18 Lakhs. The complainant demanded her amount it was not returned to her. Thereafter, said persons have refused to contact the complainant. Complainant then realized that several other persons were also duped by the accused to the tune of Rs.3,04,50,000/- Hence, the First Information Report was lodged on 20th December, 2018.

4. The applicant preferred an application for anticipatory bail before Sessions Court which was rejected vide order dated 19th January, 2019. Thereafter, the applicant and her husband preferred Anticipatory Bail Application No. 187 of 2019 before this Court. The said application was rejected by order dated 30th January, 2019. The application for anticipatory bail preferred by applicant's daughter Masumi was allowed by same order.

5. Being aggrieved by the aforesaid order rejecting application for anticipatory bail by this Court, the applicant and her husband Rajesh Mewawala approached the Hon'ble Supreme Court by preferring SLP (Cri.) No. 4959 of 2019. The said Special Leave Petition was disposed off by Hon'ble Supreme Court vide order dated 26th July, 2022, by passing the following order;

“Learned Senior Counsel for the petitioners wishes to withdraw the present Special Leave Petitions without prejudice

to the rights of the petitioners in appropriate proceedings in accordance with law.

Allowed as prayed for.

The Special Leave Petitions are accordingly, dismissed as withdrawn.

In view of withdrawal of the present Special Leave Petitions, the contempt petition is, accordingly, closed.”

6. Vide order dated 4th August, 2022 the co-ordinate bench had directed that this application be listed before me in view of the previous order dated 30th January, 2019.

7. Learned Advocate Mr. Pradhan appearing for the applicant submitted that the Special Leave Petition before the Apex Court has been withdrawn. During the pendency of the said petition, interim protection was granted to the petitioner by the Apex Court. The Special Leave Petition is allowed to be withdrawn without prejudice to the rights of the petitioner in appropriate proceedings in accordance with law. The husband of the petitioner has been arrested. He has been granted bail. On completing investigation charge-sheet is filed. Custodial interrogation of the applicant is not necessary. There is change in circumstance to entertain this application for anticipatory bail. While granting bail to the applicant's husband Rajesh Mewawala, the MPID Special Court in

paragraph 6 of the order dated 1st November, 2022 has observed that the investigation is completed and charge-sheet is submitted. The said accused is in custody from 12th August, 2022. He was in PCR till 19th August, 2022. He was interrogated. The incident of investment is of April-2017 and crime was registered on 12th February, 2018. Further custodial detention for indefinite period is not necessary. Mr. Pradhan further submitted that the husband of the applicant and others have preferred Criminal Writ Petition No. 4714 of 2019 for quashing the proceedings. Notice has been issued in the said petition. Affidavit-in-reply has been filed by Mulund Police Station. Learned counsel relied upon Judgment of the Apex Court in the Case of *Siddharth V/s Uttar Pradesh and Another (2022) 1 SCC 676*. Learned counsel adverted to the observations in paragraph 10 of the said decision, wherein it is observed that personal liberty is an important aspect of constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is possible of influencing the witnesses and accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause

incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, why there should be a compulsion on the officer to arrest the accused. The applicants husband gave complaint to Malabar Hill Police Station regarding misuse of cheques on 23rd September, 2018. He also filed private complaint in the Court. The complainant and others approached Mulund Police Station. Statement of applicants husband was recorded. Mulund Police Station has no jurisdiction.

8. Learned APP submitted that the applicant is not available for investigation after the registration of First Information Report (for short 'FIR'). Amount of Rs.2,00,00,000/-(Two Crores) was transferred to the account of applicant. Custodial interrogation of applicant is necessary. Previous application for anticipatory bail was rejected by this Court. The said order was challenged before the Apex Court. The Special Leave Petition preferred before the Apex Court was withdrawn by the applicant. The arrest of applicants husband is not change in circumstance. Learned Advocate for the first informant adopted submissions of learned APP. It is submitted that the applicant is avoiding arrest. The FIR

was registered in 2018. Charge-sheet is filed only against arrested accused. Mulund Police station had jurisdiction to entertain the complaint.

9. C.R. No.614 of 2018 has been registered on 28th December, 2018 for offences under Sections 406 and 420 r/w 34 of IPC. The applicant had preferred an application for anticipatory bail before the Court of Sessions which was rejected vide order dated 19th January, 2019. Subsequently, Anticipatory Bail Application No.187 of 2019 was preferred before this Court which has been rejected vide order dated 30th January, 2019. While rejecting the said application it was observed that the FIR depicts role played by the applicant. The complainant and others were induced to part the amount. The case is under investigation. The amount involved is Rs.3,04,50,000/- (Three crores four lakhs fifty thousand), major role is played by the applicant and her husband. The aforesaid order was challenged by preferring Special Leave Petition and as indicated above the counsel for the applicant and the co-accused sought permission to withdraw the Special Leave Petition without prejudice to the rights of the petitioners therein inappropriate proceedings in accordance with law. The Special Leave Petition was dismissed as withdrawn. The applicant now

contends that in view of withdrawal of Special Leave and saving of right to initiate proceedings, the present application has been preferred. It is pertinent to note that previous application for anticipatory bail was rejected on merits. The Special Leave Petition challenging the said order has been withdrawn. On the grounds urged by the applicant, I do not find any reason to again entertain the fresh application for anticipatory bail. Custodial interrogation of the applicant is necessary. The role played by the applicant has been considered while rejecting the previous application. The FIR has been registered in 2018. The applicant is evading arrest and scuttling investigation. Hence, no ground is made out to entertain the present application. Hence, I pass the following order.

ORDER

Criminal Anticipatory Bail Application No.2123 of 2022 is rejected.

(PRAKASH D. NAIK, J.)