

Urmila Ingale

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

ANTICIPATORY BAIL APPLICATION NO.3237 OF 2022

Brijesh Kumar Ramkumar Singh ..Applicant

vs.

State of Maharashtra ..Respondent

WITH

INTERIM APPLICATION NO. 3977 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO.3237 OF 2022

Amit Tejmal Bhandari .. Applicant

In the matter between

Brijesh Kumar Ramkumar Singh ..Applicant

vs.

State of Maharashtra ..Respondent

Ms.Anjali Patil, for applicant.

Mr. S.V. Gavand, APP for respondent.

Mr. Datta Mane, for Intervener.

Mr. Santosh Chaudhary, PSI Dadar Police Station present.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 28, 2022

P.C. :

1. Heard learned counsel for the applicant and learned APP.

2. This is an application for pre-arrest bail. The

applicant is apprehending arrest in connection with C.R.No. 310 of 2022 registered with Dadar Police Station for the offence punishable under sections 420, 406 r/w 34 of the Indian Penal Code, 1860.

3. After the matter was heard, learned counsel for the intervener submitted that he would like to file an intervention application on behalf of the complainant. In the interest of justice, I have taken the intervention application on record. Office to number the intervention application. In the interest of justice, I have heard learned counsel for the intervener-informant.

4. The alleged incident is of the year 2015. It is the informant's case that the applicant was introduced to him by the applicant's brother. The applicant projected that he is developing a building in which the informant could purchase a flat at a very reasonable price. He however, requested that an amount of Rs.40,00,000/- be paid for one BHK flat premises in respect of the redevelopment of Rehman and Roopwala chawl near Elphistone bridge. According to the informant, he later realised that the

applicant was cheated as no such development was taking place. The instant FIR came to be registered on 05/05/2022. The allegations made in the FIR would reveal that after receipt of Rs.40,00,000/-, the applicant was paying rent of Rs.20,000/- per month to the informant for a period of 17 months. The cheques given towards that end by the applicant to the informant were encashed. It is contended that thereafter neither the applicant paid the rent nor any steps taken for handing over of the possession as promised. Hence, the instant FIR was registered.

5. Learned counsel for the applicant submitted that this dispute is purely of a civil nature. According to learned counsel for the applicant, the amount of Rs.40,00,000/- has been returned to the informant by cash and nothing is payable by the applicant to the informant. Learned counsel submits that even if it is the contention that an amount of Rs.40,00,000/- is to be recovered, the present criminal proceedings cannot be converted into the proceedings for recovery of the amount. My attention is invited to the decision of the Supreme Court dated 19/01/2021 in the

case of **Dilip Singh Vs. State of Madhya Pradesh and anr.** in Criminal Appeal No. 53 of 2021. Paragraph 5 of the said decision reads thus :

“It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the persecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/ anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

6. Learned APP on the other hand submitted that the offence alleged against the applicant is of a serious nature. The applicant had promised the complainant that he would

get a flat in the project that is to be developed by the applicant. Based on such promise, informants hard earned money amounting to Rs.40,00,000/- was handed over to the applicant, some part of which was upon obtaining loan from the HDFC bank. Learned APP submits that the contention of the applicant that Rs.40,00,000/- was paid in cash to the complainant will have to be investigated. It is further submitted that there are clear allegations of cheating in the present case and merely because the Court is of the opinion that custodial interrogation is not required is no ground to allow the anticipatory bail application, if otherwise, the allegations are serious. According to learned APP, the applicant may apply for the regular bail, but this is not a case where anticipatory bail should be granted. In support of his submissions, learned counsel relied upon the decision of the Supreme Court dated 21/10/2022 in the case of **Suvitha Pradeep Vs. Arun Kumar C.K. and anr.** in Criminal Case No. 1834 of 2022. Learned APP submitted that no doubt the facts in **Suvitha Pradeep** (supra) case are in respect of offence registered under the Protection of

Children from Sexual Offences Act, 2012. However, observations made by the Supreme Court in the said decision, generally are in the context of grant or otherwise of anticipatory bail. The relevant observations read thus :

“In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

7. In view of what is held by the Supreme Court, necessity of custodial interrogation may be one of the ground for deciding the application for anticipatory bail. However, *prima facie* case against the accused and seriousness of the offence should not be overlooked and that anticipatory bail should not be granted only on the ground that custodial interrogation is not required. This Court has to look into the nature of the offence along with the severity of the punishment.

8. In the present case, the allegations made by the complainant against the applicant are that he has paid Rs.40,00,000/- for a 1 BHK flat in the project. For a period of 17 months, it is admitted that the applicant paid 17 cheques of Rs.20,000/- which were encashed towards the rent. It is thereafter that the applicant failed to pay the amount towards the rent. The applicant failed to hand over the flat premises as promised. The consideration was paid as far back as in 2015 whereas the offence was registered on 05/05/2022. Considering the nature of the allegations, *prima facie*, the dispute appears to be of a civil

nature. The informant wants to recover his money or a flat to be handed over for which this amount was paid to the applicant. Apart from this, I am satisfied that the custodial interrogation in the present case is not necessary. There is no doubt that amount of Rs.40,00,000/- was received by the applicant, but it is the case of the applicant that amount of Rs.40,00,000/- was returned in cash which the complainant is seriously disputing. In such a view of the matter, in my opinion, this is a fit case for grant of pre-arrest bail.

9. It is the contention of the learned APP that though the applicant had reported in terms of the notice issued under section 41A of the Code of Criminal Procedure, some more investigation is necessary in compliance with the earlier order passed by the Court granting interim protection. Hence the following order.

ORDER

(a) In the event of arrest of the applicant in connection with C.R. No. 310 of 2022 registered with Dadar Police Station, the applicant –Brijesh Kumar Ramkumar Singh be released on bail on his

furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence;

(c) The applicant shall report the Investigating Officer of the concerned police station on 05/12/2022, 06/12/2022 and 07/12/2022 between 11.00 a.m. and 1.00 p.m. and thereafter as and when required by the Investigating Officer.

10. The anticipatory bail application is disposed of. The interim application also stands disposed of.

(M. S. KARNIK, J.)