

PMB

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

ANTICIPATORY BAIL APPLICATION NO.2681 OF 2019

Prabhakar Shama Shetty .. Applicant
vs.

The State of Maharashtra and ors. .. Respondents

Mr. Mandar Goswami, Mr. Atul Joshi i/b. Mr. Durgesh P. Jaiswal for applicant.

Smt. S.V. Sonavane, APP for the State.

Mr. Laxmikant M. Shukla for intervener/first informant.

Mr. Jamshed Ansari for respondent no.3.

Mr. Tanaji Patil, PSI, Vanrai Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 1, 2022

P.C.:-

1. This is an application for pre-arrest bail on behalf of the applicant in connection with C.R. No. 166 of 2019 registered with Vanrai Police Station, Goregaon (W), Mumbai, for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code registered on 25.07.2019.

2. On 28.03.2022 the following order was passed :-

“1. Learned counsel for the applicant seeks time to file an affidavit in the form of an undertaking as to the manner in which the applicant can satisfy the claim of the respondent no.2-complainant. The applicant does not dispute his liability to pay the amount of Rs.4 crores to the respondent no.2. It is the contention of the applicant that as a result of the fire that broke out in August, 2016 that the financial condition of the applicant's establishment ran into rough weather.

2. List the application on Thursday (**March 31, 2022**).

3. Interim protection already in operation to continue till next date.”

3. Accordingly, an undertaking is filed on behalf of the applicant dated 30.03.2022 which is taken on record and marked as Exhibit 'X' for identification. In view of the undertaking, it is not necessary to refer to the facts of the case in detail. Suffice it to observe that the applicant admits his liability to pay a sum of Rs.4 Crores to the respondent no.2. It is the case of the applicant that on account of fire that broke out at the factory premises that the applicant ran into financial troubles. The insurance claims are pending

and part of the insurance claim is released. The major liabilities are of the respondent no.3-Union Bank of India. Learned counsel for the respondent no.3 says that the Union Bank of India has first charge over the property and dues to be recovered.

4. The undertaking of Mr. Prabhakar Shama Shetty records thus :-

UNDERTAKING

I, Prabhakar Shama Shetty, the Applicant in the Anticipatory Bail Application No. 2681/2019, hereby state on solemn affirmation as under.

1. I say that, I am also a Director and share holder of M/s. PREMIER LIGHTING INDUSTRIES PVT.LTD. Company, along with Mr. Atul Desai and as per valuation report dated on 31 march 2018, market value of the land and building was 49.41 Crores and our said company is ready to repay all liabilities of M/s "AL-RKAYAN APPARELS AND EXPORTS PVT.LTD COMPANY, including the amount due towards the complainant M/s ERAM PROPERTY NETWORK PVT.LTD.

2. I further say that due to fire incidence, our said company was and is facing financial crises and not in position to repay the bank or the complainant,

hence to clear all the liabilities the applicant is ready to dispose of factory premises along with the machinery in open market and willing to repay all debts which will be totalling to approximately 45 crore.

3. That the balance insurance claim of around 6.8 crores along with enhancement of claim is still pending with the Insurance Company, even the same may be used to clear the dues of the bank as well as the complainant.

4. I undertake to repay the dues/amount of the complainant on first priority along with the Bank, and ready to execute MOU with the complainant to this regard.

5. I further reiterate that I undertake to clear all the liabilities of complainant and the bank, on receipt of the consideration of the factory premises including the machinery, and balance Insurance claim amount.

6. That I am ready and willing to repay, voluntarily, the balance amounts paid by the complainant, immediately on receipt of the consideration towards the properties of the company and balance insurance claim, subject to the grant of leave of this Hon'ble Court.

7. I say that I hereby undertake to repay as above to the complainant. HENCE THIS UNDERTAKING.”

5. Learned counsel for the applicant on instructions undertakes that within a period of eight months from today the liabilities towards the bank and the complainant will be cleared by the applicant upon disposing of the property. Learned counsel for the applicant on instructions undertakes to abide by the conditions mentioned in the undertaking. The undertaking is accepted.

6. Learned counsel for the respondent no.2/first informant on instructions submits that the respondent no.2 is interested in getting back its rightful dues and is presently satisfied with the undertaking as the applicant has agreed to abide by the undertakings and repay their debts within a period of eight months from today. Learned counsel for the First Informant therefore does have an objection to the following order being passed. Hence, the following order :-

ORDER

(i) The interim order dated 14.01.2020 passed by

this Court is confirmed.

(ii) In the event of the arrest of the applicant in connection with C.R. No.166 of 2019 registered with Vanrai Police Station, Goregaon (W), Mumbai, the applicant shall be released on bail on furnishing a bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant shall co-operate with the investigation and report to the Investigating Officer as and when called.

(iv) The statement of learned counsel on behalf of the applicant on instructions that the applicant will abide by the terms mentioned in the undertaking within a period of eight months from today is accepted.

(v) The passport of the applicant which is already deposited with the Investigating Officer shall remain so deposited subject to further orders that may be passed by the trial Court.

7. The Anticipatory Bail Application is disposed of.

(M.S. KARNIK, J.)