

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 1813 OF 2023

Dipali Dattatrya Patil	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Yuvraj S. Gharat, for the Applicant.

Mr. Amit A. Palkar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 5, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.112 of 2023 registered with Murgud police station, District Kolhapur for the offences punishable under Sections 406, 409, 420 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.).

2. According to the prosecution, based on promise made by accused Nos.1 and 2, the informant invested Rs.8,20,300/- with the firm i.e. Dhanshant Multi Trading Services LLP. The applicant is one of the partner of the firm. The applicant and other co-accused promised return @11%. On refusal to repay the amount, accused persons told informant that they have invested the amount in big trading company. The informant was taken Pune. Accused No.3

promised that he will transfer a flat in favor of the informant towards repayment of the amount. Subsequently, it was refused, the informant is, therefore, filed report against applicant.

3. The applicant, therefore, filed application under Section 438 of Cr.P.C. before learned Sessions Judge which came to be rejected by order dated 13 June 2023. Aggrieved thereby, the applicant has filed the present anticipatory bail application.

4. Learned Advocate for the applicant submitted that accused No.1 is the husband of applicant who is already in jail for the said offence. According to him, if the applicant is arrested children of applicant will suffer. She is ready to co-operate with investigation and therefore, custodial interrogation is not necessary.

5. On perusal of material on record including case papers, it appears that apart from informant 8 other victims have invested similar amount with LLP of accused Nos.1 and 2. The total amount invested as of today is Rs.2,79,20,000/-. The other informants/victims and their amount are shown in the report. Considering of bank rate of interest, it was impossible for any person to pay return @ 11% per annum. Therefore, on the day of promise accused Nos.1 and 2 were aware that it was not possible to repay of investors @ 11%. Prima facie dishonest and fraudulent intention was apparent. Therefore, prima facie case is made out against the applicant. In so far as, the contention of the applicant is that custodial interrogation of the applicant is not necessary is concerned.

6. Moreover, the Apex Court in the case of **Sumitha Pradeep v.**

Arun Kumar C.K. & Another reported in 2022 SCC OnLine SC 1529 was considering grant of bail to an accused charged with an offence under Protection of Children from Sexual Offences Act, 2012. The Apex Court, in paragraph 16, observed as under:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. 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 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 anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

7. The Apex Court has held that there is misconception amongst litigants that the custodial interrogation is the only factor the Court while exercising power under Section 438 Cr.P.C. is required to consider.

8. While exercising power under Section 438 of Cr.P.C. the Court primarily is required to consider prima facie case and thereafter necessity of custodial interrogation. In the facts of the case, I am satisfied that there is prima facie case made against the applicant. The applicant is not entitled to relief under Section 438 Cr.P.C. The anticipatory bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)