

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.442 OF 2023
WITH
INTERIM APPLICATION NO.713 OF 2023**

Kiran Ashok Alekar	...Applicant
vs.	
The State of Maharashtra	...Respondent

Ms. Mayuri Hatle, for the Applicant
Smt. Ashwini Takalkar, APP, for the Respondent/State.
Mr. Rohit Joshi, for the Intervener.
Mr. Sanjay Tadvi, PSI, Naupada police station.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 11, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No.339 of 2023 registered at Naupada police station for the offences punishable under section 406 read with 34 of Indian penal Code, 1860.
3. The indictment against the applicant runs as under:-

In the year 2019 the first informant and her family members were planning a trip to America. The applicant and his wife Jhanvi, the co-accused, were engaged in Tours and Travels business under the name and style of "Tanushree Travels". The applicant

represented to the first informant that for arranging a tour of five persons inclusive of air fair, stay in America and visa etc., expenses of Rs. 30-32 lakhs were required. The first informant transferred an amount of Rs. 31,71,972/- to the accounts indicated by the applicant. On account of Covid 19 pandemic, the said tour was required to be cancelled.

4. The applicant represented that he would arrange a tour for the first informant alone during the period of 28th October, 2022 to 11th November, 2022. As the date of the departure came close, the applicant and the first informant tried to contact the accused. Neither the applicant nor the co-accused gave response. Having realized that she was deceived by furnishing the details of tour itinerary, flight schedule, hotel bookings, the first informant lodged the report.

5. When the matter was listed before this Court on 3rd April, 2023 an affidavit cum undertaking was tendered by the applicant proposing to repay the amount. Thereupon, the Court was persuaded to grant interim protection. The applicant undertook to repay an amount of Rs. 26,50,000/- which, according to the applicant, was due and payable, in three installments. The last installment of Rs. 11 lakhs was payable on 10th May, 2023.

6. When the matter was again listed before the Court, on

12th June, 2023, after noting that the applicant had not complied with the undertaking, this Court was persuaded to vacate the interim protection. On 27th July, 2023, it seems, again the applicant had shown willingness to issue fresh Demand Draft. Thereupon, the Court was persuaded to revive the interim protection.

7. Today when the matter was taken up, the learned counsel for the applicant made an endeavour to urge that the applicant had filed affidavit cum undertaking on 27th February, 2023 on the advise of the advocate, who then represented the applicant, without fully understanding the import of the said undertaking. It was submitted that the applicant was not in a position to repay the amount, as promised. The learned counsel thus advanced submissions on merits.

8. I am mindful of the proposition that an accused can not be declined the relief of pre-arrest bail solely on the ground that the accused had failed to comply with the undertaking to deposit the amount or has not deposited the amount ordered to be paid by the Court. The Court cannot impose a condition of depositing the amount while granting the relief of pre-arrest bail. However, when an accused obtains an interim order by making the Court believe that he would abide by the undertaking given to the Court on an affidavit and later on disowns the statement in the affidavit on the

specious ground that he had not understood the import of the contents of the affidavit fully, different considerations came into play.

9. It is pertinent to note that by making the Court believe that the accused would honour the commitment, the accused obtains an interim protection and, resultantly, the investigation suffers, at a crucial stage. A practice of obtaining such orders by filing an affidavit and disowning the said affidavit after a considerable time, deserves to be deprecated. The time which elapses brings in its trail developments like completion of investigation and filing of the charge-sheet. To permit the accused to resile from the affidavit and then take advantage of the passage of time by urging that in view of the developments in the intervening period, custodial interrogation of the accused is not warranted, would amount to putting a premium on disingenuity. The situation is exacerbated where, unlike statement before the Court made by the counsel on the instructions of a party, an affidavit is filed by the party containing the undertaking. To hold that such sworn statement, on which the Court is made to act upon, is of no consequence is to allow the judicial process to be abused.

10. Nonetheless, I am inclined to consider the prayer for pre-arrest bail on merit. The learned counsel for the applicant made

an endeavour to draw home the point that on account of tumultuous circumstances brought about by Covid 19 Pandemic, the applicant could not render the services, as promised. The intention of the applicant was not dishonest since inception of the transaction.

11. The learned APP, on the other hand, submitted that the dis-obedience of the undertaking given to the Court indicates that the applicant never intended to perform the promise and the intent was dishonest.

12. The learned counsel for the first informant supplemented the submissions of the learned APP.

13. The purpose of enterprise, in my view, assumes significance. It is not a failure to supply a commodity. After receiving an amount of Rs. 31 lakhs, it was incumbent upon the applicant to make the provision for air fair, hotel accommodation and other incidental charges and expenses in accordance with the tour itinerary. The failure to make those provisions while making the traveler to believe that he would travel on particular dates, prima facie, involves an element of dishonesty. The business model is based on the spread which the tour and travel operator earns by booking air tickets and hotels. Such bookings were not made, therefore, cannot be construed as a mere failure to perform the promise. The attendant inconvenience and trauma caused to the

traveler cannot lost sight of.

14. In view of the above the applicant, who has made an endeavour to obtain the interim protection by making the Court believe that he would repay the amount, which was indisputably paid to him, does not deserve the exercise of discretion. Hence, I am inclined to reject the application.

Hence, the following order.

ORDER

1] The application stands rejected.

2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)