IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 478 OF 2022

Bindu Rana Kapoor ..Applicant
VS.
Union of India and Anr. ..Respondent

Mr. Abad Ponda, Sr. Advocate a/w Adv. Aditya Mithe, Adv Siya Chaudhary, Adv. Sachine R. Agawane i/b Aditya Mane for the Applicant.

Mr. H.S. Venegavkar, for the Respondent no. 1.

Ms. A. A. Takalkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 12, 2023

P.C. :

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

2. This is an application for pre-arrest bail. The applicant is apprehending arrest in connection with Special CBI Case No. 1233 of 2021 filed by C.B.I. on 08/10/2021, for the offence punishable under sections 11, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and under section 120-B and 420 of the Indian Penal Code, 1860.

3. While granting interim protection to the applicant by order dated 23/02/2022, this Court observed thus:

> “4. Very briefly, on merits, the case of C.B.I. appears to be that the main accused Rana Kapoor had extended various monetary benefits in the form of credit facility to one Gautam Thapar’s company which had a property in the prime locality of Amrita Shergill Marg, New Delihi. That property was initially mortgaged with Yes Bank. Subsequently, that property was purchased by M/s. Bliss Abode Pvt. Ltd., of which the present applicant was a Director. She is wife of the main accused Rana Kapoor. The allegations are that, by entering into this transaction, undue advantage was given by Yes Bank to Gautam Thapar. Rana Kapoor, through the applicant’s company had obtained this prime property for much lesser price of around Rs.378 crores than it’s actual price. The actual price was more than Rs.600 crores. Basic allegations are that, there was conflict of interest as Rana Kapoor was controlling the Yes Bank and he used Yes Bank to purchase that property for the company of which the present applicant was a Director.
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> 5. The investigation was carried out and the charge-sheet was filed on 08/10/2021. Learned Special Judge, C.B.I.-Greater Mumbai, issued summons to the accused persons including the present applicant for appearance. She appeared through her counsel on 27/10/2021 and claimed personal exemption, which was granted by that court. On the next date i.e. on 11/11/2021, the applicant again appeared through her counsel and claimed personal exemption which was also granted by the court. After that she filed an application for anticipatory bail before the same court. It was her case that, she apprehended her arrest because in the past in a similar case when she had appeared in response to the summons, she was taken in custody. Learned trial Judge extensively heard her anticipatory bail application and passed the impugned order below Exh. 14 in Special Case No. 1233 of 2021 on 18/02/2022. It is specifically held that the anticipatory bail application was not maintainable.

6. Learned Judge relied on the observations in the case of *Ramesh son of Markin Vs. State through DY. RFO., Criminal Petition No. 9975/2021, decided by Karnataka High Court on 21/01/2022.* While giving reasons, he had observed that, since the applicant had appeared through her counsel, as per Ramesh’s case (supra) the contention that the accused’s appearance through advocate would not amount to custody was not acceptable. That was one of the reasons why the application was not maintainable.

7. The other reason given by the learned Judge was regarding the apprehension expressed by the applicant that, if she preferred regular bail application, it could be rejected by that court and she could be taken into custody. According to the learned Judge, that apprehension cannot be said to be within the ambit of Section 438 of Cr.p.c.

8. Shri. Ponda, learned senior counsel for the applicant submitted that, in another case when the applicant had appeared before the court in response to the summons, she was taken in custody and she was in jail for about 21 days. She was released on bail by the Hon’ble Supreme Court. Therefore, his apprehension is not without foundation. He secondly attacked the other reason of the learned Judge that, if the applicant appeared through her counsel, then anticipatory bail application is not maintainable. According to Shri. Ponda, this reason is also not in accordance with the law. Learned Judge has reproduced the allegations against the applicant, but has not given his finding on merits and he has rejected the application on maintainability of the application itself.

9. Shri. Ponda submitted that the allegations are against the main accused Rana Kapoor and on the date when the transaction was completed and during the period of conspiracy, the applicant was abroad and she is roped in only because she is wife of the main accused. He submitted that, during investigation, the C.B.I. did not find it necessary to arrest the applicant, therefore, there was no propriety in taking her into custody after the charge-sheet is filed and at the stage of issuance of summons.”

4. So far as one of the accused- Gautam Thapar is concerned, Bail Application No. 51 of 2022 was filed in this Court. The same was allowed vide order dated 25/03/2022. The prosecution case is briefly set out in the said order. This Court while granting bail to the co-accused- Gautam Thapar observed thus:

> "3. The CBI has registered FIR No. RC.BA1/2020/A0004-CBI/ACB/Mumbai against the aforesaid Applicant and the other co-accused for offences punishable under sections 120(B) r/w. 420 of the Indian Penal Code and sections 7, 11 and 12 of the Prevention of Corruption Act, 1988. The allegations against the Applicant and the co-accused inter alia are that the Applicant, Promoter of AG companies and the co-accused – Rana Kapoor, the Managing Director and CEO of Yes Bank Ltd, his wife - Smt. Bindu Rana Kapoor, Director of M/s. Bliss Abode Pvt. Ltd. had entered into a criminal conspiracy to divert the sale proceeds of the property mortgaged with Yes Bank and to cheat the bank for the purpose of obtaining above illegal gratification. It is alleged that Rana Kapoor had obtained illegal gratification in the form of a property in the prime location in New Delhi at much less than the realizable market value. There was principal outstanding of Rs.350 crores to ICICI Bank and Rs.30 crores to DCB Bank against charge of above property in New Delhi. It is alleged that as a part of the conspiracy, Yes Bank sanctioned loan of Rs.400 Crores to M/s. Avantha Reality Ltd. (ARL) as Lease Rental Discounting (LRD) for a period of 10 years. It is alleged that it was essentially a sham agreement entered into with an intention to defraud and cheat Yes Bank Ltd. As a part of conspiracy, Rana Kapoor extended various concessions, relaxations and waivers to various AG companies promoted by the Applicant and thereby obtained illegal gratification to the tune of Rs.307 Crores by acquiring an expensive property at Rs.378

Crores against the declined value of Rs.685 Crores.

4. The records indicate that the Applicant was served with the notice whereupon the Applicant appeared before the Investigating Agency and he was interrogated and upon completion of the investigation, charge sheet came to be filed on 08/10/2020. On receipt of the summons, the Applicant appeared before the Court and sought bail. The Bail Application has been dismissed mainly on the ground that the Applicant is involved in committing economic offence and the fact that he has repaid the outstanding amount, is not sufficient to wipe out the criminal liability.

5. Mr. Mahesh Jethmalani, learned Senior counsel for the Applicant has relied upon the decision of the Apex Court in Satender Kumar Antil v/s. CBI and anr. 2021 SCC OnLine SC 922 and has also relied upon the order dated 16/12/2021 in Miscellaneous Application Diary No(s).29164/2021 in SLP(Crl) No.5191/2021, wherein the Hon'ble Supreme Court has laid down guidelines for grant of bail after filing of the charge sheet in different categories/types of offences. Economic offences not covered by Special Act, are classified under category 'D' and it was held that in such cases on appearance of the accused in Court pursuant to the process issued, bail application to be decided on merits.

6. In subsequent order dated 16/12/2021, the Apex Court has clarified that " if during the course of investigation, there has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto cause to arrest the petitioner, an aspect in general clarified by us in Criminal Appeal No.838/2021 in Siddharth v/s. State of Uttar Pradesh and anr. dated 16.08.2021 . "

7. In the instant case, as noted above, the FIR was registered on 12/03/2020. The Applicant has reported to the Investigating Officer as and when called and co-operated throughout in the Investigation. Upon completion of the investigation, charge sheet has been filed on 08/10/2021. The Investigating Officer did not find it necessary to arrest the accused during the course of investigation. Hence, in terms of the clarification given by the Hon'ble Supreme Court, it is

> not necessary to detain the Applicant in custody pending trial, particularly considering the fact that the trial is not likely to conclude in near future, in view of large pendency of cases.
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> 8. Under the circumstances and in view of discussion supra, the Applicant is entitled for bail. Hence, the Bail Application is allowed on following terms and conditions :-
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> (i) The Applicant who is facing trial in Special Case No.101233 of 2021 pending on the file of Special Judge (CBI), Greater Bombay, is ordered to be released on bail on furnishing PR bond in the sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with one or two solvent sureties in the like amount.
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> (ii) The Applicant shall report to CBI, ACB, Mumbai once in a month on every 1st Saturday between 11.00 a.m. to 02.00 p.m. until further orders;
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> (iii) The Applicant shall not interfere with the complainant and/or shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case, in any manner ;
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> (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
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> (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
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> (vi) The Applicant shall not leave the Country without prior permission of the Court.
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> 9. Bail Application stands disposed of in above terms.”

5. Shri Venegaonkar for the respondent no. 1 submitted that no doubt the investigation is complete and the charge sheet is filed, however, the present application for anticipatory bail is not maintainable and the applicant has to file a regular bail application before the C.B.I. Special Court just as the co-accused Gautam Thapar did.

6. To counter this objection, my attention is invited by learned Senior Advocate for the applicant to the decision of the Hon'ble Supreme Court in the case of **Bharat Chaudhary Vs. State of Bihar**[1]. The Hon'ble Supreme Court considered factors which have to be taken into consideration for the granting of anticipatory bail. It is further held that the mere fact of taking cognizance or filing of the charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. Relevant portions from paragraph nos. 6 to 10 reads thus:

> "6. We do not think that was the intention of the legislature when it incorporated Section 438 in CrPC which reads thus:
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> > "438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, it it thinks fit, direct that in the event of such arrest, he shall be released on bail."
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> 7. <u>From the perusal of this part of Section 438 of CrPC, we find no restriction in regard to exercise of this power in a suitable case either by the Court of Session, High Court or this Court even when cognizance is taken or a charge-sheet is filed. The</u>

1 (2003) 8 Supreme Court Cases 77

object of Section 438 is to prevent undue harassment of the accused persons by the pre-trial arrest and detention. The fact, that a court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet, would not by itself, in our opinion, prevent the courts concerned from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of a charge-sheet cannot by itself be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Session, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of CrPC even when cognizance is taken or a charge-sheet is filed provided the facts of the case require the court to do so.

8. The learned counsel, as stated abvoe, has relied on the judgment of this Court referred to hereinabove. In that case i.e. namely *Salauddin Abdulsamad Shaikh*[1] a three-Judge Bench of this Court stated thus: (SCC p. 668, paras 2 & 3)

When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having

> regard to the material placed before it, the accused person is entitled to bail.
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> 9. From a careful reading of the said judgment we do not find any restriction or absolute bar on the court concerned granting anticipatory bail even in cases where either cognizance has been taken or a charge-sheet has been filed. This judgment only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of a charge-sheet would be of some assistance for coming to the conclusion whether the claimant for anticipatory bail is entitled to such bail or not. This is clear form the following observations of the Court in the above case: (SCC p. 668, para 2)
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> "It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted."
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> 10. From the above observations, we are unable to read any restriction on the power of the courts empowered to grant anticipatory bail under Section 438 of CrPC."
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> (emphasis mine)

7. In the present case, the investigation is complete and the charge-sheet has been filed. The co-accused- Gautam Thapar who is facing more serious accusations than the applicant and who is alleged to have conspired with the husband (Rana Kapoor) of the applicant, has been granted bail by this court on 25/03/2022, the relevant portion of the order is reproduced hereinbefore. The applicant is the wife of the main accused. The applicant's case so far as the manner in which the investigation proceeded is similar to that of co-accused- Gautam Thapar, except that the applicant filed an Anticipatory Bail Application post investigation and filing of charge-sheet, whereas Gautam Thapar filed a regular bail application. The applicant, in my opinion, should not be deprived the facility of anticipatory bail particularly in the light of what has been laid down by Their Lordships in the case of **Bharat Chaudhary** (supra), also considering that 'Gautam Thapar' has been released on bail. In this view of the matter, the present application can be allowed. The applicant has been granted interim protection on 23/02/2022 by this Court. The applicant co-operated with the investigation. The investigation is complete and the charge-sheet has been filed. The Investigating Officer did not find it necessary to arrest the applicant. Interim protection granted by this court by order dated 23/02/2022, therefore, deserves to be confirmed and is accordingly confirmed. The application is allowed in the following terms.

ORDER

(a) In the event of arrest of the applicant in connection with Special CBI Case No. 1233 of 2021 filed by C.B.I. on 08/10/2021, the applicant-Bindu Rana Kapoor, be released on bail on her furnishing P.R. Bond in the sum of Rs.30,000/- 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 regularly attend the trial;

(d) The applicant shall not leave India without prior permission of the Special Court.

8. The application is disposed of.

(M. S. KARNIK, J.)