IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.937 OF 2023

Jay Chimanlal Desai ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. Mahesh Vaswani with Ms Shreya Tiwari, Ms Dharini Nagda, Ms Lakshita Fatnani, Mr. Sushil Pandey for the Applicant.
Mr. S.V. Gavand, APP for Respondent -State.
Mr. Akshay Shetty i/b. M/s. AVC and Associates for the Intervenor.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 5th OCTOBER, 2023.

P.C.:-

1. The Applicant herein seeks pre-arrest bail in Crime No.106 of 2023 registered with Borivali Police Station, District-Mumbai, for the offences punishable under Sections 420, 406, 467, 468 and 120B r/w 34 of the IPC.

2. The aforesaid crime was registered pursuant to the FIR lodged by Sohanlal Motilal Jain, the builder by profession. The facts narrated in the FIR prima facie reveal that the First Informant was in

need of Rs. 10 crores. One of his relatives-Rajesh Jain assured him that Arvind Jain and Surendra Chordia, both from Chennai, would be coming to Mumbai and that they could help him in getting the loan on payment of commission. The First Informant handed over his Aadhar Card, two passport size photos and his bank statement, etc. to Rajesh Jain, which were forwarded to co-accused -Arvind Jain. Subsequently, said Rajesh Jain arranged a meeting between the First Informant and the co-accused Arvind Jain and Surendra Chordia. They informed the First Informant that their friend i.e. the Applicant herein would help him in getting loan of Rs.10 crores on payment of 20% commission.

3. Subsequently, Rajesh Jain, co-accused Arvind Jain and Surendra Chordia introduced the First Informant to the Applicant. The Applicant informed the First Informant that Bank Officers and Managers of Ratnakar Bank, Axix Bank and other banks are known to him and he could arrange loan of Rs.10 crores on payment of 20% commission towards service charges. The First Informant agreed to the terms and conditions set up by the Applicant herein and he handed over to him all the documents needed for the KYC. The

Applicant and the other co-accused assured the First Informant that the loan was being processed and demanded money from time to time towards service charges. Accordingly, the First Informant transferred total amount of Rs.75,00,000/-. Out of the total amount of Rs.75,00,000/- an amount of Rs.44,00,000/- was transferred into the account of the Applicant.

4. The First Informant alleges that despite payment of service charges, the Applicant and the co-accused neither arranged the loan nor refunded the money paid towards service charges. When questioned, the Applicant and the co-accused assured him that the loan would be sanctioned immediately. Some days later, the co-accused Surendra Chordia and Arvind Jain called the First Informant near 'Tiwari Sweets', Devki Nagar, Borivali, Mumbai and gave him some Fixed Deposit Receipts stating that the same were sent by the Applicant herein and that the loan would soon be sanctioned. Since the loan was not sanctioned, the First Informant approached the Bank with the FDs, only to know that the FDs were forged and fabricated. The First Informant therefore lodged the FIR, pursuant to which aforesaid crime came to be registered.

5. It may be mentioned that earlier on 31/03/2023 in the course of the hearing, counsel for the Applicant had stated that the Applicant was ready to pay Rs.44,00,000/-, which was received by him from the First Informant. He had filed an affidavit wherein he had volunteered to make the payment and had given the schedule of payment. In the light of the said statement, the Applicant was granted interim protection.

6. On 17/04/2023 a statement was made that the Applicant had handed over to the First Informant two cheques for Rs.11,00,000/-, both dated 17/04/2023 and another cheque dated 21/04/2023 of Rs.22,00,000/-. Since the cheques were post dated, the matter was adjourned to 06/06/2023.

7. On 06/06/2023 it was brought to the notice of the Court that the cheques issued by the Applicant were dishonoured. Learned counsel for the Applicant made a statement that the Applicant was not in a position to pay the amount. This Court observed that the interim relief was obtained by making a false statement. This Court

further held that this is not a fit case to exercise discretionary powers under Section 438 of the Cr.P.C. and dismissed the application.

8. The Applicant challenged the said order before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.9553 of 2023 wherein a statement was made that there was no intention on the part of the Petitioner to give an undertaking to this Court. The Apex Court has observed as under:-

> *"... Though learned counsel for the petitioner would submit that there was no intention on the part of the petitioner to provide such undertaking to the High Court, at this stage, we are unable to appreciate this aspect since it is for the High Court to take a call on this aspect. However, in a circumstance where the petitioner is indicating that the petitioner had no intention of giving such undertaking, the appropriate course for the High Court would be to decide the application on its own merits and in accordance with law. On that aspect, we do not express any opinion on the matter."*

9. Accordingly, the matter was taken up on board and both parties were heard on merits.

10. Learned counsel for the Applicant submits that the Applicant is ready to cooperate with the investigation and that the nature of the offence does not justify custodial interrogation. He has relied upon the decision of the Hon'ble Supreme Court in ***Gurbaksh Singh Sibia v/s. State of Punjab (1980) 2 SCC 565*** and ***Siddharam Mhetre v/s. State of Maharashtra (2011) 1 SCC 692***. He submits that the Applicant had earlier filed an undertaking to repay the amount in view of the instructions of his advocate who was earlier representing him. He further submits that the criminal process cannot be utilized to recover the money. He has placed reliance of the decision of the Apex Court in ***Bimla Tiwari v/s. State of Bihar and ors. (CRL) Nos.834-835 of 2023*** and ***Dilip Singh vs. State of Madhya Pradesh and Anr.*** in ***Criminal Appeal No.53 of 2021.*** Learned counsel for the Applicants has also relied upon several other decisions which are either on the facts of the case or not relevant to decide the issue.

11. Mr. Gavand, learned APP submits that the material on record prima facie reveals that the Applicant and the other co-

accused had induced the First Informant in paying an amount of Rs.75,00,000/- on a false assurance that they could arrange the loan of Rs.10 Crores. The Applicant and the others were also involved in fabricating the fixed deposit receipt. Learned APP submits that the Applicant on his own volition given an undertaking to refund the money. He submits that the Applicant was not interrogated since he had earlier expressed his willingness to settle the dispute and refund the money to the First Informant. Learned APP further submits that the other co-accused who are from Chennai, are absconding and attempts are being made to trace these accused. He also submits that the Applicant has criminal antecedents.

12. At the outset, it may be mentioned that in the course of the hearing the Applicant had made a statement that he is ready to pay the money to the First Informant and accordingly he had filed an undertaking before this Court. There can be no gainsaying that the bail cannot be granted solely on the basis of the paying capacity of the accused. The guiding factors to be considered for bail are the nature and gravity of the offence, the antecedents, the possibility of the Applicant to flee from justice, etc. In the instant case, the

Applicant was not directed by the Court to make the payment or to give such undertaking. He had volunteered to settle the dispute by refunding the money paid by the First Informant. Though learned counsel for the Applicant states that earlier Advocate on record had persuaded the Applicant to give such an undertaking, the records reveal that acting upon such undertaking the Applicant had issued post dated cheques in favour of the First Informant. Said cheques were dishonoured and it is only then that the Applicant expressed inability to make the payment. It is also relevant to note that having made a statement before the Hon'ble Apex Court that the Applicant did not intend filing such an undertaking, learned counsel for the Applicant has once again stated that even today, the Applicant is ready and willing to refund the money to the First Informant, but has difficulty in arranging the money. This being the case, the contention that the Applicant had no intention of giving such undertaking is an incorrect statement.

13. Be that as it may, the FIR prima facie reveals that the First Informant herein was in need of money. His relative Rajesh Jain introduced him to co-accused, who in turn introduced him to

the Applicant herein. The material on record prima facie reveals that the Applicant had informed him that several bank managers and officers are known to him and he could get the loan sanctioned on payment of commission/services charges. The records prima facie reveal that the First Informant had transferred total amount of Rs.75,00,000/- into the account of the Applicant and co-accused Surendra Chordia. Out of which Rs.44,00,000/- has been transferred into the account of the Applicant. The records reveal that the Applicant not only failed to get the loan sanctioned in favour of the Applicant, but he alongwith the other two accused handed over to the First Informant forged and fabricated FDs. The material on record thus prima facie shows the involvement of the Applicant in commission of the crime, which is of serious nature. The crime is still under investigation and the Applicant is yet to be interrogated. Grant of pre-arrest bail at this stage would reduce the interrogation to a mere ritual. The Other two accused, who are residents of Chennai are absconding. Learned APP states that efforts are being made to trace their whereabouts and arrest them.

14. Furthermore, learned APP has placed on record a

statement, which indicates that three other crimes are registered against the Applicant for offence under Section 420 of the IPC and that the Applicant is facing prosecution in seven complaints filed by several other persons for offence under Section 138 of the Negotiable Instruments Act.

15. Considering the nature of the offence and the criminal antecedents of the Applicant, this is not a fit case to exercise discretion under Section 438 of the Cr.P.C. in favour of the Applicant. Hence, the application is dismissed.

16. Learned counsel for the Applicant seeks to extend the interim protection. Learned APP states that the Applicant has evaded interrogation under the pretext of settlement. Considering the nature of the accusations, request for extension of interim relief is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)