*SA Pathan*

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

**ANTICIPATORY BAIL APPLICATION NO.1489 OF 2023**

Ram Dashrath Gaikwad … Applicant
**V/s.**
The State of Maharashtra … Respondent

Mr. Ranjeet M. Pawar for the applicant.
Mrs. Rutuja Ambekar, APP for the respondent/State.

**CORAM : AMIT BORKAR, J.**

**DATED : JULY 4, 2023**

**P.C.:**

**1.** Apprehending arrest in connection with C.R. No.0047 of 2023 for offences punishable under Section 406, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 and Section 3, 4 and 5 of the Maharashtra Protection of Interest of Depositors Act, 1999, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

**2.** According to the prosecution, accused No.1 and the co-accused had cheated innocent investors of Rs.5 to 6 crores in the name of Rice Pulling (using radiation of Chandrayan and Mangalyan disease like cancer can be cured). Accused No.1 is the group leader who told the informant that accused No.1 had received Rs.44,000 crores from Research Organization (NASA). He pretended that the Government of India had told you, accused No.1 the amount of Rs.44,000 crore could not be disbursed to the applicant in cash, but 60% of the said amount needed to be deposited with the Government of India as a non-refundable unsecured loan and thereafter, accused No.1 will get the amount of Rs.27,000 crore from the Government of India. He portrayed his mother's name as the legal heir to claim the amount. He, therefore, called upon the informant and others to execute the agreement on Rs.500/- stamp paper. Accordingly, the informant and 15 others executed such an agreement in favour of accused No.1, which was Rs.20 lakh.

**3.** Accused No.1, thereafter, portrayed to the investors that he had got 500 acres of land from the 13th heirs of Jeeva Mahale. On 24 December 2019, accused No.1 gave an impression and depicted that he had purchased 4,500 acres of land for its development as Film-city. He invited 2000-2500 members based on an aforesaid promise. He further received the amount from various investors. According to the prosecution, the amount of Rs.5 to 6 crore has been received by the accused persons in connivance with each other. The applicant is accused No.1.

**4.** Before considering the material on record, it is necessary to consider the parameters of Section 438 of Cr.P.C. in the context of economic offences. Judicial notice needs to be taken of the exponential rise in economic offences by luring innocent investors promising high returns, getting investments and refusing to pay back their money. Such offences have affected the economic development of the Country.

**5.** The Apex Court, in the case of **Narinderjit Singh Sahani &**

**Anr. vs. Union of India and Ors** reported in (2002) (2) SCC 210, was considering a case under Sections 406, 409, 420 and 120-B of IPC, wherein it is observed that in relation to such offences power under Section 438 of the Criminal Procedure Code shall not ordinarily be exercised unless it is established that such criminal accusation is not a bona fide one.

**6.** In the case of **Ram Narayan Popli vs Central Bureau of Investigation** reported in (2003) 3 SCC 641 in paragraph 382 has observed thus:

> "**382.** The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the Sate are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. <u>An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in State of Gujrat v. Mohanlal Jitamalji Porwal</u>."

**7.** The Supreme Court, in the case of **Himanshu Chandravadan Desai & Ors vs State of Gujarat,** reported in (2005) 13 SCC 234 was considering a similar case where the applicant, along with other directors of a cooperative bank, siphoned off funds of the bank by bogus and fictitious documents. The Apex Court refused to grant regular bail under Section 439 of Cr.P.C. relying on the Constitution Bench of the Supreme Court in the case of **Bihar Legal Support Society vs Chief Justice of India & Anr.,** reported in 1986 (4) SCC 767, observing that the crime in which petitioners are involved is very serious, involving a conspiracy to cheat and the fraud public institutions for a systematic manner and punishment is likely to be severe in the event of a conviction.

**8.** The Supreme Court, in the case of **Gurbaksh Singh Sibbia etc. vs State of Punjab,** reported in 1980 (2) SCC 565, delineated the parameters exercising powers under Section 438 of Cr.P.C. holding “the larger interest of public or State" is one of the relevant factors to be kept in mind by the Court while deciding the application for anticipatory bail.

**9.** In the case of **Nimmagadda Prasad vs C.B.I.,** reported in **2013 (7) SCC 466**, the Apex Court, in paragraph 25, has observed as under:

> “**25.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing

serious threat to the financial health of the country."

**10.** Prima facie, considering of material on record, it appears that the receipt of the amount promising to cure diseases using the method of Rise Pulling ( radiation of Chandrayan and Mangalyan by a disease like cancer can be cured) gives the impression that receipt of the amount of Rs.44,000 crore from NASA and accepting amounts for the development of Film City on 4500 acres of Forest Land indicate the dishonest and fraudulent intention of the applicant on the day of acceptance of various amount from the investors. The applicant was conscious of the fact that such a promise could not be fulfilled. Prima facie, two accounts of the applicant in axis bank indicate a transaction of Rs.3,97,45,024/-. Prima facie, the applicant apparently transferred part of the investment amount to his brother to purchase the Benami property. The Memorandum of Understanding (M.O.U) indicates that the construction of Film-City was impossible on the day of the agreement, as the land is forest land. Neither the applicant nor the co-accused claiming ownership could have entered into such an agreement. Co-accused had the right to transfer such Forest land to the applicant, nor could the applicant have utilized the said Forest land to develop Film City. Therefore, all three reasons stated by the applicant to get investment from the investors indicate dishonesty and fraud at the inception of the transaction.

**11.** According to the prosecution, custodial interrogation of the applicant is necessary to unearth *the modus operandi* of receiving such a huge amount. Investigating the benami property purchased by the applicant out of the investment amount is also necessary. It is also necessary to investigate the purchase of cars by the applicant's relatives.

**12.** Learned Advocate for the applicant expressed the applicant's readiness to deposit Rs.2,68,00,000/- on or before 10 August 2023. However, learned APP strongly opposed the request as the applicant's custodial interrogation is necessary.

**13.** On overall consideration of allegations against the applicant, in my opinion, considering the magnitude of the financial scam of the applicant, custodial interrogation of the applicant is necessary as the importance of custodial interrogation has been explained in paragraph 6 by the Apex Court in the case of **State represented by CBI v. Anil Sharma** reported in (1997) 7 SCC 187 as under:

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."

**14.** On an overall view of the matter, I am prima facie satisfied that custodial interrogation of the applicant in the facts of the present case is necessary to unfold such type of economic offence.

**15.** According to the prosecution, the applicant had cheated 600 to 700 investors for a huge amount, i.e. Rs.6 crore, which is likely to be increased. Considering the magnitude of the financial scams, elicitation-oriented custodial interrogation is necessary. Therefore, the applicant is not entitled to protect pre-arrest bail. The anticipatory bail application is, therefore, rejected.

**(AMIT BORKAR, J.)**