



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

ANTICIPATORY BAIL APPLICATION NO.1559 OF 2023

Tushar Rajnikant Shah

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

...

Mr. PR. Yadav for the Applicant.

Mr. Dishang Shah for Respondent Nos.2 and 3.

Ms A.A. Takalkar, APP for Respondent -State.

Mr. Tushar Shah, Applicant, present.

Mr. Vipul Shah, Respondent No.2 present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED :19th AUGUST, 2023.

P.C.:-

1. By this application under Section 438 of the Cr.P.C. the Applicant seeks pre-arrest bail in C.R. No. 163 of 2023 registered with Charkop Police Station, Mumbai, for the offences punishable under Sections 406 and 420 r/w 34 of the IPC.

2. Learned counsel for the Applicant and the First Informant state that the parties have settled the dispute amicably. In view of the settlement, learned counsel for the Applicant seeks leave to implead M/s. Dhriti Clothing Co. through its proprietor, Chandrakala Kochar as Respondent No.3. Leave is granted. Cause title be amended forthwith.

3. Mr. Dishang Shah, waives service on behalf of Respondent No.3.
4. Learned counsel for the Applicant and Respondent Nos.2 and 3 have placed on record consent terms, which read thus:

2 (i)

(ii) Subject to the complete compliance of the consent terms in letter and spirit, the Applicant/Accused have amicably settled his disputes and differences arising out of FIR No. 163 of 2023 registered with Charkop Police Station with the Respondent No. 2 and 3. The Applicants hereby agrees to pay an amount of Rs. 26,00,000/- (Rupees Twenty-Six Lakhs only) to the Respondents No. 2 and Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) to the Respondent No. 3 as and by way of full and final settlement of the disputes between the parties hereto. In view of the settlement of dispute, the Respondent No. 2 and 3 has graciously accepted to settle the dispute without claiming any amount towards interest, penalty, compensation, damages, litigation cost, etc. in case the present applicant follow the schedule of payment in letter and spirit.

(iii) The Applicants/Accused abovenamed agree to pay an amount of Rs. 26,00,000/- (Rupees Twenty Six Lakhs only) to the Respondents No. 2 and Rs. 6,50,000/- (Rupees Six

Lakhs Fifty Thousand Only) to the Respondent No. 3 starting with effect from 19.08.2023 and ending on 20.04.2025 by two instalments by RTGS remaining instalments by post-dated cheques drawn on the Saraswat Co-op. Bank, Andheri (West) Branch, Mumbai in the names and manner as mentioned bellow:

Sr.	Cheque Dates	Cheque No.	Amount in Rs.	In the name of
1.	19/8/2023	RTGS	5,00,000	Mr. Vipul shah
	19/8/2023	RTGS	1,00,000	Dharti Clothing Co.
2.	31/8/2023	RTGS	5,00,000	Mr. Vipul shah
	31/8/2023	RTGS	1,00,000	Dharti Clothing Co.
3.	20/9/2023	186045	1,00,000	Mr. Vipul shah
4.	20/10/2023	186046	1,00,000	Mr. Vipul shah
5.	20/11/2023	186047	1,00,000	Mr. Vipul shah
6.	20/12/2023	186048	1,00,000	Mr. Vipul shah
7.	20/01/2024	186049	1,00,000	Mr. Vipul shah
	20/01/2024	186050	25,000	Dharti Clothing Co.
8.	20/02/2024	186051	1,00,000	Mr. Vipul shah
9.	20/03/2024	186052	100,000	Mr. Vipul shah
10.	20/04/2024	186053	100,000	Mr. Vipul shah
	20/04/2024	186054	25,000	Dhriti Clothing Co.
11.	20/05/2024	186055	100,000	Mr. Vipul shah
12.	20/06/2024	186056	100,000	Mr. Vipul shah
13.	20/07/2024	186057	60,000	Mr. Vipul shah
	20/07/2024	186058	40,000	Dhriti Clothing Co.
14.	20/08/2024	186059	60,000	Mr. Vipul shah
	20/08/2024	186060	40,000	Dhriti Clothing Co.
15.	20/09/2024	186521	60,000	Mr. Vipul shah
	20/09/2024	186522	40,000	Dhriti Clothing Co.
16.	20/10/2024	186523	60,000	Mr. Vipul shah

Sr.	Cheque Dates	Cheque No.	Amount in Rs.	In the name of
	20/10/2024	186524	40,000	Dhriti Clothing Co.
17.	20/11/2024	186525	60,000	Mr. Vipul shah
	20/11/2024	186526	40,000	Dhriti Clothing Co.
18.	20/12/2024	186527	60,000	Mr. Vipul shah
	20/12/2024	186528	40,000	Dhriti Clothing Co.
19.	20/01/2025	186529	60,000	Mr. Vipul shah
	20/01/2025	186530	40,000	Dhriti Clothing Co.
20.	20/02/2025	186531	60,000	Mr. Vipul shah
	20/02/2025	186532	40,000	Dhriti Clothing Co.
21.	20/03/2025	186533	60,000	Mr. Vipul shah
	20/03/2025	186534	40,000	Dhriti Clothing Co.
22.	20/04/2025	186535	60,000	Mr. Vipul shah
	20/04/2025	186536	40,000	Dhriti Clothing Co.

The Applicants further undertakes that the applicant shall be responsible for ensuring the compliance of the above payment schedule. The Applicant shall pay an amount of Rs. 26,00,000/- to Respondent No. 2 and an amount of Rs. 6,50,000/- to the Respondent No. 3 and thus the applicant shall pay total amount of Rs. 32,50,000/- to the Respondents till 20/4/2025.

(iv) The Applicants hereby agrees and undertakes that all the cheques as mentioned hereinabove shall be honoured by the bankers of the applicant, upon the presentation of the said Cheques by the respective Respondents in their bank account and none of the aforesaid cheques shall be

dishonoured on any ground whatsoever, attributable to the applicant or their bankers.

(v) The Respondent No. 2 and 3 agrees and undertakes that upon receipt of the entire amount of Rs. 32,50,000/- i.e. Rs. 26,00,000/- to Respondent No. 2 and an amount of Rs. 6,50,000/- to the Respondent No. 3, as mentioned above, strictly in accordance with the given schedule, the Respondent No. 2 and 3 and their heirs, successor, relative shall have no claim whatsoever against the Applicant in relation to any legal rights including monetary claims or otherwise or in the said flat which was subject matter of Memorandum of Understanding and entire dispute between the parties arouse out of said investment by the Respondent No. 2 and 3 into the business of the Applicant shall stand terminated/cancelled/revoked immediately after payment of last instalment. The both parties shall withdraw all pending litigation against each other after payment of last instalment as per present consent terms.

(vi) The Respondent 2 and 3 hereby give their consent for defreezing the Bank Account of the Applicant upon payment of the first instalment of total Rs. 6,00,000/- i.e. Rs. 5,00,000/- to Respondent No. 2 and Rs. 1,00,000/- to the Respondent No. 3 by RTGS.

(vii) It is further agreed by and between the parties that upon

payment of last instalments i.e. upon complete payment of the said amount of Rs. 32,50,000/- i.e. Rs. 26,00,000/- to Respondent No. 2 and an amount of Rs. 6,50,000/- to the Respondent No. 3, the, Respondent No. 2 shall return the cheque bearing No. 150290 for Rs. 20 Lakhs and Cheque bearing No. 177595 for Rs.3.50 Lakhs to the Applicant and the Respondent No. 3 shall return the Cheque bearing No. 177559 and 177560 to the Applicant.

(viii) It is further agreed by and between the parties hereto that as long as the applicant is complying with the terms of the present consent terms by paying the instalments as per the given schedule and as such the present consent terms continues to remain in force, the Respondent No. 2 and 3 shall not file any fresh litigation and/or pursue the pending litigation if initiated and shall not make use of any previous cheques, undertaking, letter, assurance in the custody of the Respondent No. 2 and 3 given by the applicant/accused, prior to execution of the present consent term for initiating / continuing / pursuing any civil or criminal litigation against the applicant in respect of the subject matter of the present consent terms;

(ix) It is further agreed by and between the parties, that in case of breach of the present consent terms by the applicants in any manner and more particularly any default in payment

of any instalments, then the Respondent No. 2 and 3 shall be at liberty to initiate civil or criminal litigation as per their original claim notwithstanding the averments made in the present consent terms, against the applicant as permissible in law and the applicant shall not raise any issue of law of limitation for objecting such litigation;

- (x) On the basis of assurances given by the Applicants to the Respondent No. 2 and 3 in the present consent terms and upon payment of last instalments i.e. upon complete payment of the said amount of Rs. 32,50,000/- i.e. Rs. 26,00,000/- to Respondent No. 2 and an amount of Rs. 6,50,000/- to the Respondent No. 3, the Respondent No. 2 and 3 including the First informant shall withdraw the allegations made by him/them against the applicant and upon filing of a petition for quashing of FIR and / or charge sheet by the applicants, the Respondent No. 2 and 3 including the First informant, shall appear before the Hon'ble High Court and give their no objection for quashing of FIR and / or charge sheet against the applicants or in the alternative in case any application for compounding of the offence is filed before the appropriate court, then full co-operation and assistance shall be extended by the Respondent No. 2 and 3 including the First informant by executing necessary documents such as no objection /

affidavit for compounding of the offenses.

(xi) It is further agreed by and between the parties that the wife of the Applicant is implicated as co-accused in the present crime. As per the undertaking given by the applicant in the present consent terms, till 24/4/2024 the applicant shall complete payment of an amount of Rs. 20,50,000/- to the Respondent No. 2 and 3 i.e. Rs. 18,00,000/- to the Respondent No. 2 and Rs. 2,50,000/- to the Respondent No. 3 and after said payment of Rs. 20,50,000/- to the Respondent No. 2 and 3, the Respondent No. 2 and 3 shall give their no objection and/or necessary affidavit before Hon'ble High Court for quashing of FIR / Charge sheet as against her in WP No. 2240/2023 filed by wife of the Applicant Smt. Amita Tushar Shah or any further amended / fresh petition as may be filed by her; however it is made clear and accepted by the applicant, that pendency of any such petition of the wife of the applicant before the Court due to any reason whatsoever, shall not be a ground for the applicant to withhold or delay the payment of any instalment as stated in the above mentioned schedule of payment.

3. On the basis of assurances given in the present consent terms, by the Applicant to the Respondent No. 2 and 3

including the First Informant, the Respondent No. 2 and 3 have no objection for granting anticipatory bail to the present Applicant. It is further agreed by and between the parties that the anticipatory bail granted to the Applicant upon execution of present consent terms, shall be liable to be cancelled in case of breach of the present consent terms by the applicant by making any default in given schedule of payment;

4. That it has also been agreed between the parties that they will adhere to the terms and conditions of this consent terms and will do all acts necessary for the expeditious compliance of the same and shall cooperate with each other in the interest of both the parties.

5. That the contents of this consent terms have been read over and explained to both the parties and they have understood the same to be true and correct and both the parties have executed this consent terms bonafide, voluntarily and out of their own free will and consent, without any force, pressure, duress, threat, fraud, coercion, misrepresentation, collusion or undue influence, whatsoever.

6. That both the parties to the present consent terms

undertake that they shall duly perform and abide by all the terms and conditions as contained in the present Consent terms and in case of breach of any of the terms and conditions as envisaged hereinabove, the party committing default shall be liable to be punished under the provisions of Contempt of Courts Act, 1971.

7. That both the parties hereby agrees that upon due compliance of present consent terms, both the parties and / or anybody claiming through them, their legal heirs, relatives, their assigns shall not file any future civil or criminal litigation against either side in respect of the subject matter referred to in the present consent terms

5. The parties are identified by their respective counsel. Terms are acceptable to the parties. Hence, the same are taken on record and marked 'X' for identification.

6. Since the parties have settled the dispute amicably and have stated that they will be filing quashing proceedings, in my considered view this is a fit case to grant relief under Section 438 of the Cr.P.C.

7. Hence, the application is allowed on the following terms and

conditions:-

- (i) In the event of arrest of the Applicant in C.R. No. 163 of 2023 registered with Charkop Police Station, Mumbai, he shall be released on bail on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;
- (ii) The Applicant shall report to the concerned Investigating Officer as and when required for the purpose of investigation;
- (iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

8. The application stands disposed of.

9. This Court acknowledges and appreciates the efforts taken by Shri Gavand, learned APP in assisting the parties in arriving at an amicable settlement and in formulating the consent terms.

10. Stand over to **04/09/2023** for compliance.

(SMT. ANUJA PRABHUDESSAI, J.)