

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1649 OF 2022

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Nita Ratnakar Mahajan

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Dr. Uday P. Warunjikar with Ms. Sonali R. Chavan and
Ms. Neha Deshpande for the applicant.

Mrs. Rutuja Ambekar, APP for respondent No.1/State.

Mr. Pritesh Bohade for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.284 of 2020 registered with Dindori Police Station, Nashik for offences punishable under Sections 120-B, 406, 420, 191, 192, 193, 427, 468, 463, 464, 465, 471, 474, 504, 506 read with Section 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to the informant, she and applicant were the partners of Nitidnya Steel Metal which deals with the business of stone crusher. She was misguided by the informant and one Mr. Rajendra Shelke to invest money in their business. The informant,

therefore, was promised to receive yearly profit of Rs.35 to Rs.40 lakh. Accordingly, the informant and applicant entered into partnership on 25 October 2011. The informant invested amount of Rs.1,17,25,000/- by cheque or RTGS as a capital of the partnership firm. Subsequently, the applicant neglected to furnish accounts of said firm to the informant. The cheques issued by the applicant towards profit of the firm were dishonored. By forging partnership documents, new firm was created and bank account was opened with ICICI Bank. According to informant, therefore, amount of Rs.8,10,00,000/- was misappropriated by the applicant out of the funds of the partnership firm.

3. The applicant, therefore, filed an application under Section 438 of the Criminal Procedure Code, 1973 before the learned Sessions Judge which came to be rejected by order dated 10 June 2022. The applicant, therefore, filed present anticipatory bail application.

4. On perusal of the report and material on record, it prima facie appears that the dispute between the applicant and informant arises out of rights created by the partnership deed. Non-furnishing of accounts of partnership and dishonor of cheques for the amount of profit prompted registration of report. The position of law regarding the status *qua* partnership in the context of Section 406 of the Indian Penal Code, 1860 was subject matter of issue before the Apex court in the case of **Velji Raghavji Patel v. The State of Maharashtra** reported in AIR 1965 SC 1433. The Apex Court considering the provisions of the Partnership Act *qua* Section 406 of the Indian Penal Code, 1860 observed that in case

of partnership, every partner has dominion over the partnership property by reason of the fact that he is a partner. Unless prosecution establishes dominion over asset of partnership by special agreement between the parties, the element of entrustment would be absent. It is held that in absence of such agreement receipt of profit by the partner cannot be said to have been received in a fiduciary capacity.

5. In the facts of the present case, essential allegations are as regards non-furnishing of profit and dishonor of cheque. Remedy for dishonor of cheque is somewhere else. For accounts of partnership, the remedy is to file a civil suit. Considering prima facie case, custodial interrogation of the applicant is not necessary. Hence, following order:

- a) In the event of arrest of the applicant in connection with C.R. No.284 of 2020 registered with Dindori Police Station, Nashik for offences punishable under Sections 120-B, 406, 420, 191, 192, 193, 427, 468, 463, 464, 465, 471, 474, 504, 506 read with Section 34 of the Indian Penal Code, 1860, he be released on bail on furnishing P.R. Bond in the amount of Rs.50,000/- with one or two sureties in the like amount;
- b) The applicant shall remain present before the investigating officer on 10, 12 and 14 July 2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the concerned investigating officer;
- c) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

- d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
 - v) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - vi) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
- 6.** The anticipatory bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)