

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO.2183 OF 2023

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Kumar Kunal	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Abhijeet Shukla, for the Applicant.

Mr. Amit A Palkar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 11, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.46 of 2021 registered with Cyber Cell police station, Pune City for offences punishable under Sections 420 of the Indian Penal Code, 1860 (for short 'IPC') and under Section 43(a), (f), (g), (i), 66C and 66D of the Information Technology Act, 2018, the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. The prosecution case is as under:

The informant (Swapnil Vaidya) lodged report alleging that since February 2021, he is working in S.G. Analytics Company as Consultant. In June 2021, his friend (Abhishek Kumar Sabhajeet Singh) called him and told that there is page named as GMAT_GRE_SHORTCUT on Instagram on which under the banner

of CREAM EDUCATION coaching center an advertise was published about how to secure more marks in GMAT, GRE, VIT, B.Tech entrance exams and for that one has to pay amount. The friend of informant suspected some scam and requested informant to provide his laptop for sting operation. Thereafter, the informant gave his laptop to him, but due to electricity failure he could not appear in exam. It is alleged that his friend Abhishek requested to informant to allow him to appear in exam from his house as there was inverter facility at the house of informant. He asked informant to help him in sting operation. Therefore, Abhishek gave mobile number of informant to accused Pranav.

On 13 July 2021, the informant received WhatsApp call of said Pranav, who told that they will help him to score more marks in GMAT entrance exam. Pranav also told that, if he secured desired marks, then he will have to make payment. Thereafter, Pranav sent package details on the WhatsApp number of informant. On the same day Pranav created WhatsApp group and added informant and Abhishek. On 14 July 2021, on the say of Pranav, informant installed Any Desk app on his laptop and Abhishek's laptop. Then laptop of informant was being operated remotely. On 15 July 2021, the informant appeared for exam with the help of DREAM EDUCATION of which remote access was obtained by the applicant/accused. Informant got provisional score as 770/800. Then, on 17 July 2021 Pranav asked informant to deposit 4 lakh in one bank account. On that informant disclosed to Pranav that they appeared in exam for sting operation and they are taking action against him by reporting matter to police. Pranav

stated that he is only employee and one Abhay Kumar is the head of coaching center. He also told that Abhay Kumar is about to commit such scam in AIIMS entrance exam. Accordingly, informant lodged report against Pranav and Abhay Kumar Mishra which is registered as above. It is mainly alleged that accused in this crime run a scam with the help of Any Desk app, some of accused obtained remote access of computers of respective students and solved papers in GMAT exam in place of students and if students get desired marks, then they obtains money from those students. Therefore, the report lodged against the applicant with the concerned police station.

3. The applicant, therefore, filed application under Section 438 of Cr.P.C. before learned Sessions Judge which came to be rejected by order dated 27 July 2023. Aggrieved thereby, the applicant has filed the present anticipatory bail application.

4. According to the applicant, he has been falsely implicated, there is no material to connect the applicant with the alleged offence. According to him, he has neither received any amount nor connected with the transaction alleged in the report. He has changed his mobile which he had used during the transaction referred in the First Information Report (F.I.R.). He, therefore, prays for protection under Section 438 of Cr.P.C.

5. Per contra, learned APP submits that there is prima facie material available against the applicant in the form of WhatsApp chat, diary maintained by the principle accused which indicate payment of Rs.1,47,000/- being paid to the applicant and one

more entry of Rs.2,56,000/-. According to him, WhatsApp chat between one Shantanu and the applicant is sufficient to implicate the applicant.

6. At this stage with the assistance of learned Advocate, I have perused the case diary and the material on record produced by the applicant. On perusal of the material on record, prima facie, it appears that the relevant extract of diary maintained by the principal accused indicate payment of Rs.1,47,000/- and Rs.2,56,000/- to the applicant by cash. The prosecution case gets strength from the WhatsApp conversation between the applicant and witness Shantanu who is one of the victim.

7. According to investigating agency when the applicant was called upon to submit his cell phone which was used during the said transaction, he stated that he has changed the cell phone and he produced new cell phone.

8. According to applicant, he has ready to cooperate with investigation.

9. This Court in Anticipatory Bail Application No.1123 of 2023 has explained the concept of cooperation with the investigation in paragraph 10, this Court has observed as under:

“10. Moreover, another aspect of the matter which requires serious consideration is the concept of cooperation with the investigation. It appears that general impression carried by the accused persons is that only physical presence and making statement before the investigating officer satisfies cooperation with investigation. However, it needs to be

clarified that cooperation with investigation contemplates willingness and active participation of individual or entities in providing information, assistance and support to the investigating agencies during process of investigation of a potential crime, violation or wrong doing. Whenever a person is asked to cooperate with the investigation, this includes sharing of relevant facts, documents, records and other evidence that might aid the investigation. A person may be asked to provide statement, testimony or their perspective of a situation on being investigated. Cooperation involves assistance to the investigating officer in collecting evidence, recording statements and performing other activities that would help the investigating agency to build a comprehensive understanding of the situation. The requirement of cooperation with investigation includes providing accurate and complete information, full disclosure and transparency which are crucial aspects of cooperation as withholding or manipulating information can prejudicially affect the investigation process. Cooperation with the investigation is a significant factor in determining outcome of a crucial trial. Lack of cooperation or partial cooperation may lead to reduction in punishment at the end of trial.”

10. In the context of observations made in the said order the WhatsApp chat between witness Shantanu and the applicant does have material bearing on the investigation. Therefore, custodial interrogation of the applicant is necessary. The efficacy of custodial interrogation has been explained by the Apex Court in the case of

State represented by CBI v. Anil Sharma reported in (1997) 7 SCC 187, in paragraph 6 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 ensconced 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 disinterring 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 insulated 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.”

11. The cumulative effect of reasons mentioned above, the applicant failed to make out grounds to grant relief under Section 438 of Cr.P.C. Therefore, custodial interrogation is necessary to unfold such type of offence. The anticipatory bail application is, therefore, rejected.

(AMIT BORKAR, J.)