



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2931 OF 2021**

Devdas Bhujang Rao and Ors. ... Applicants
versus
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.626 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.2931 OF 2021

Namrata Niranjan Bhise ... Applicant/Intervener
and
Devdas Bhujang Rao and Ors. ... Applicants
versus
State of Maharashtra ... Respondent

Mr. Niranjan Mundargi with Ms. Neha Bachim i/by Kulkarni and Associates for
Applicant in ABA 2931 of 2021.

Mr. S.H.Yadav, APP for State.

Mr. M.J.Bhatt, for Applicant in IA.

Mr. Sagar Kautkar, PSI, Kapurbawadi Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 30 OCTOBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.311 of 2020 registered with Kapurbawadi Police Station for the offences punishable under Sections 120B, 420, 406, 415 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act,

1999.

3. When the application was listed before this Court on 7 December 2021, this Court was persuaded to grant interim protection noting the submission made on behalf of the applicants that in respect of the transactions in question, a FIR was lodged vide C.R.No.120 of 2018 registered with Park Site Police Station for the offences punishable under Sections 406, 420 read with Section 34 of the IPC and Section 4 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. The Court also noted the legal position enunciated in the cases of **T.T.Antony V/s. State of Kerala and Ors.**¹ and **Amitbhai Anilchandra Shah V/s. The Central Bureau of Investigation and Anr.**²

4. The learned Counsel for the Applicants submitted that the applicants were arrested and, post completion of investigation, chargesheet came to be filed in the said FIR. Attention of the Court was invited to the conclusion drawn by the Investigating Officer in the Report under Section 173 of the Code of Criminal Procedure. Investigating Officer has, inter alia, referred to the alleged deception practiced by the accused in respect of 62 persons, including Gardenia Apartment at CTS Nos.92 and 95, Sambhaji Nagar, Tunga Village, Powai, Mumbai.

5. It was further submitted that one investor – Ashish Kumar Khanduri in

1 (2001) 6 SCC 181

2 (2013) 6 SCC 348

respect of the property in Gardenia Apartment had lodged complaint under the provisions of MPID Act and the learned Special Judge had declined to issue process as the said offences were covered by the earlier FIR. An appeal preferred by the said Ashish came to be dismissed by this Court by an order dated 12 July 2023.

6. The learned Counsel for the first informant submitted that the project in respect of which the instant FIR has been lodged by the first informant and the subject matter of the investigation in C.R.No.120 of 2018 in which the applicants were arrested, is distinct. It was submitted that in C.R.No.120 of 2018 the offences punishable under Sections 3 and 4 of the MPID Act, were not added. In the instant case, the learned Special Judge has passed an order under Section 156(3) of the Code of Criminal Procedure. The offences may be similar but not the same. Therefore, the applicants do not deserve the exercise of discretion.

7. I have perused the order passed by the learned Special Judge in Criminal Misc. Application No.284 of 2020. It refers to the fact that C.R.No.120 of 2018 was registered with Park Site Police Station, Vikhroli at the instance of the first informant therein, and the statement of the complainant also came to be recorded during the course of the investigation of the said FIR. Prima facie, it appears that there was reference to the instant transaction and the chargesheet lodged by the Investigating Officer in C.R.No.120 of 2018. Moreover, by an order dated 12 July 2023 in Criminal Appeal No.499 of 2022 this Court had observed that the the police had investigated

about the allegations against the accused in respect of the same transactions and the chargesheet has been filed.

8. In this view of the matter, the observations of the Supreme Court in paragraphs 20 and 27 of the Supreme Court in the case of **T.T.Antony (supra)**, prima facie cover the facts of the instant case. They read as under :

“20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.”

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant

subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.”

9. In any event, the applicants were arrested in C.R.No.120 of 2018 and, post completion of investigation, the investigating agency had filed the chargesheet, specifically referring to the fraud committed by the applicants in respect of the instant FIR.

10. Therefore, at this length of time, I am inclined to make the order of interim bail dated 7 December 2021 absolute.

10. Hence, the following order :

ORDER

(i) The order dated 7 December 2021 granting interim bail to the applicants is made absolute on the terms and conditions incorporated therein.

(ii) The Applicants shall co-operate with the investigation and report

to Kapurbawadi Police Station on 6th, 7th and 8th November 2023 in between 10.00 a.m. to 1.00 p.m., and, thereafter, as and when directed.

(iii) The Applicants shall regularly attend the proceedings before the jurisdictional Court.

(iv) The Application stands disposed.

(vi) The interim application also stands disposed.

(N.J.JAMADAR, J.)