



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2945 OF 2023**

Bhavesh Bhimrao Vitkar ... Applicant
versus
The State of Maharashtra & Anr. ... Respondents

Mr. Valentine Mascarenhas with Mr. Ernest Tuscano, for Applicant.
Mr. M.G.Patil, APP for State.
PSI Rahul M. Phad, Vasai Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 23 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.253 of 2023 registered with Vasai Police Station for the offences punishable under Sections 420 406 read with Section 34 of the Indian Penal Code.
3. The co-accused Viven Menezes and Vanessa Viven Menezes, husband and wife duo, had induced the first informant to part with an amount of Rs.2,81,000/- by making a false representation that he would be secured an employment in Malta. The first informant was induced to credit the amount in the account of Accused No.1, Viven, Manoj Mohan Dalvi and Sanket. It later transpired that Manoj Dalvi's account was fraudulently opened by the co-accused Viven and he was operating the said account. It was, inter alia, alleged that some amount was transferred from the

SSP (corrected order as per Speaking to the Minutes of Order dated 27 Oct. 2023) 1/4

said account to the account of the applicant. The first informant realized that the applicant was also a privy to the offence of cheating. Hence, the report.

4. The learned Counsel for the applicant submitted that the applicant had neither made any false representation, nor induced the first informant to part with any amount. The only allegation against the applicant is that the principal accused Viven had credited an amount of Rs.24,000/- in the account of the applicant. Inviting the attention of the Court to the statements of account of the applicant maintained with Bassein Catholic Co-op. Bank Ltd., it was submitted that the said amount was immediately withdrawn and paid back to the first informant.

5. As against this, learned APP submitted that there is material to show that the co-accused Viven and the applicant had fraudulently opened and operated the account in the name of Manoj Mohan Dalvi. Attention of the court was invited to the statement of Mr. Manoj Mohan Dalvi who claimed that the applicant and Viven forced him to open the said account.

6. From the perusal of the allegations in the FIR, it appears that the allegations of making false representation and thereby inducing the first informant to part with the amount are primarily against accused No1. Viven. By an order dated 17 October 2023 in ABA 2705 of 2023 this Court was persuaded to grant pre-arrest bail to Vanessa Viven Menezes, wife of principal accused No.1 as she has deposited an amount of Rs.13,500/- which was credited to her account. In the case at hand, qua the

applicant the only material seems to be the credit of the amount of Rs.24,000/- in the account of the applicant from the account of Mr. Manoj Dalvi. At this stage, the contention on behalf of the applicant that the said amount was immediately withdrawn and paid back to the first informant, cannot be delved into.

7. The learned Counsel for the Applicant submitted that, without prejudice to the rights and contentions of the applicant, the applicant is willing to deposit an amount of Rs.24,000/- in the Court of the Judicial Magistrate, First Class, Vasai.

8. As noted above, neither the allegations of making false representation, nor inducing the first informant are attributable to the applicant. I am, therefore, inclined to exercise discretion in favour of the applicant subject to deposit of the aforesaid amount.

9. Hence, the following order :

ORDER

(i) The applicant shall deposit an amount of Rs.24,000/- with the Judicial Magistrate, First Class, Vasai, exercising jurisdiction over the Vasai Police Station, within a period of four weeks.

(ii) Subject to the deposit of Rs.24,000/- by the applicant within a period of four weeks, in the event of the arrest of the Applicant – Bhavesh Bhimrao Vitkar in connection with C.R.No.253 of 2023 registered with Vasai Police Station, the Applicant be released on bail on furnishing a PR bond in the sum of Rs.30,000/- with

one or two sureties in the like amount.

(iii) The Applicant shall co-operate with the investigation and report to Vasai Police Station on 1st and 2nd November 2023 in between 10.00 a.m. to 1.00 p.m., and, thereafter, as and when directed.

(vi) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses and the persons acquainted with the facts of the case.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) The amount of Rs.24,000/- to be deposited by the applicant shall be invested in an interest bearing account and shall abide by final decision arising out of C.R.No.253 of 2023.

(vii) The Application stands disposed.

(N.J.JAMADAR, J.)