

**IN THE HIGH COURT OF DJUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4213 OF 2022**

IN

ANTICIPATORY BAIL APPLICATION NO. 470 OF 2022

Pallavi Anirudha Joshi ...Applicant

In the matter of

1. Anirudha Balkrishna Joshi
2. Pallavi Anirudha Joshi ...Applicants

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 4214 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO. 470 OF 2022

Rajani Balkrishna Joshi ...Applicant

In the matter of

1. Anirudha Balkrishna Joshi
2. Rajani Balkrishna Joshi ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr. Harshad Bhadbhade i/b Mr. Sandeep R. Karnik for the Applicants in both I.A.s.

Mr. P.H. Gaikwad Patil, APP for the State.

Mr. Yogendra Kumar a/w Mr. Arun Longani for the Original Complainant.

Mr. Ganesh Mokashi, API, Sinhgad Road Police Station, Present.

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CORAM : N.R. BORKAR, J.

DATED : 3 JANUARY 2023

P.C. :-

The applicant in Interim Application No. 4214 of 2022 is accused in Crime No. 316 of 2021. She along with co-accused

Anirudha Joshi filed the Anticipatory Bail Application No. 2896 of 2021.

2. The applicant in Interim Application No. 4213 of 2022 is accused in Crime No.51 of 2022. She along with co-accused Anirudha Joshi, who is common accused in both the crimes, filed the Anticipatory Bail Application No. 470 of 2022.

3. This Court had disposed of both applications by common order dated 29 March 2022. The said order reads thus:

“ These Applications, seeking anticipatory bail, arise out of Crime Nos.51 of 2021 and 316 of 2021, registered with Sinhagad Police Station, under Section 406, 417, 420 and 120B read with Section 34 of the Indian Penal Code.

2. I have heard the learned counsel for the parties. Perused record.

3. Crime No.306 of 2021 is registered on the basis of the complaint dated 3 August 2021 lodged by Sachin Babasheb Dangat. According to the informant in the year 2014, the informant along with his brother Nitin Dangat were proposing to start a construction business by formation of Arindam Procon Pvt. Ltd. They were looking for land. The Applicant and his brother accordingly purchased 65 R's of land from the Applicants Anirudha Joshi, Rajani Joshi and Mr. Aditya Balkrishna Joshi out of Survey No.71/12A and 71/12B/1 of Taluka-Haveli, District- Pune under a Registered Sale Deed dated 13 November 2014 for a valuable consideration of Rs.9 Crores.

4. The informant got the land converted for non-agricultural use on 7 May 2016. Subsequently, a

Confirmation Deed was executed in favour of the informant and his brother by the aforesaid Vendors on 30 January 2016. The informant claims that the Applicants avoided to furnish the original Sale Deed in their favour.

5. The informant states that the necessary due diligence was made, before purchase of the said land including by issuance of a Public Notice dated 21 October 2014, in response to which there were no objections received.

6. The Confirmation Deed came to be registered on 30 January 2016 at registration No.894 of 2016. The consideration of Rs.9 Crores was transferred by a bank entry.

7. The informant came cross a notice dated 22 June 2018 from the Tahasildar, Haveli, District- Pune in the name of M/s. Aditya Polymers and Chemicals India Pvt. Ltd. (APC Pvt.Ltd.) through Anrirudha Joshi, Aditya Joshi and Rajni Joshi claiming that from 2010-2013 the APC Pvt. Ltd had obtained a loan from a consortium of banks led by Bank of Baroda and as a security for the said land subject land ad-measuring 65 R's (which was sold to the informant and his brother) was mortgaged to the said consortium. It is thus claimed that the informant and his brother have been cheated for an amount of Rs.9 Crores.

8. On the basis of such a complaint an offence came to be registered which is under investigation.

9. Crime No.51 of 2022 with Sinhagad Police Station is again registered on the basis of the complaint dated 2 February 2022 by Sachin B. Dangat on similar allegations. It is claimed that the Applicants although had assured to clear the loan granted by the consortium led by Bank of Baroda and to remove the encumbrance on the property has failed to do so.

10. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor, assisted by the learned counsel for the informant. Perused record.

11. It is not disputed on behalf of the Applicants, that the

land was mortgaged as a security, for the loan obtained from consortium of the banks, led by Bank of Baroda, although the amount of the loan obtained from the consortium is disputed. In otherwords it is an admitted position that the land was already mortgaged and in spite of the same, it was sold to the informant claiming it to be an unencumbered land with a free marketable title.

12. The record discloses that interim protection was granted to the Applicant in ABA No.2896 of 2021 on 3 January 2022 and subsequently a similar protection was granted in ABA No.470 of 2022 on 22 February 2022, inter alia for the reason that the statement was made on behalf of the Applicants that they are ready and willing to pay Rs.15.5 Crores to clear the encumbrance on the land on or before 17 March 2022. It was submitted that a person by name Ruchit Bhatnagar who is presently in Dubai (UAE) was in process of obtaining financial assistance for APC Pvt. Ltd. out of which the payment of Rs.15.5 Crores can be made.

13. The record discloses that the Applicants have been claiming that they are ready and willing to pay the amount at least since 9 June 2017 for which documents are produced on record which are annexed to the reply filed by the State.

14. The learned counsel for the informant has pointed out the letter issued by Bank of Baroda on 9 June 2017 (Page No.140 of the compilation in ABA No.470 of 2022). It is also pointed out that there was a MoU executed between the parties. The record is replete with instances when time was granted to the Applicants to make such payment. On the last date a statement was made that as per the changed rules the loan cannot be raised in UAE without obtaining a key man's insurance, which was in process.

15. Today again there was a request for grant of time as the key man's insurance formalities have not been completed.

16. The learned counsel for the informant pointed out that Ruchit Bhatnagar was one of the Director in APC Pvt. Ltd.

17. *Considering the overall circumstances, when this Court had expressed inability, to grant further extension of time to deposit the amount, the learned counsel for the Applicant on instructions submitted that the Applicant Anirudha Joshi shall surrender before the Investigating Officer within two weeks from today and the Applicants Pallavi Joshi and Rajani Joshi may be protected, in order to enable the Applicants to co-operate with the investigation and also to make the payment, as stated before this Court, within the period as may be granted by this Court.*

18. *The learned Additional Public Prosecutor and the learned counsel for the informant submitted that the appropriate orders may be passed in the context of the willingness shown by the Applicant.*

19. *In my considered view, the proper investigation of the matter is the paramount consideration at this stage. In such circumstances, the Applicant No.1 Anirudha Joshi can be granted time to surrender before the Investigating Officer and the other Applicants can be directed to join the investigation at this stage.*

20. *In such circumstances, the following order is passed:*

ORDER

(i) *The prayer for grant of anticipatory bail to the Applicant No.1 Anirudha Joshi stands rejected.*

(ii) *The Applicant Anirudha Joshi is granted time of two weeks to surrender before the Investigating Officer and to co-operate with the Investigating Agency.*

(iii) *The Applicant Anirudha Joshi to file an undertaking to that effect before this Court, within one week from today.*

(iv) *In the event of her arrest, in Crime No.316 of 2021, registered with Sinhagad Road Police Station, Pune, Applicant No.2-Rajani Balkrishna Joshi, be released on bail, on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount.*

(v) *In the event of her arrest, in Crime No.51 of 2022,*

registered with Sinhagad Road Police Station, Pune, the Applicant- Pallavi Anirudha Joshi, be released on bail, on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount.

(vi) The Applicants Pallavi Joshi and Rajani Joshi shall report to the Investigating Officer on 6 and 7 April 2022 between 11.00 to 1.00 p.m. and as and when required by the Investigating Officer.

(vii) The Applicants shall surrender their passport before the Investigating Officer.

(viii) The Applicants are granted six weeks time to deposit the amount of Rs.15.5 Crores before this Court. An undertaking to that effect be filed before this Court within two weeks from today.

(ix) The applicants shall not tamper with the prosecution evidence/witnesses.

(x) In the event of breach of any of the conditions, liberty to the prosecution to apply for modification/cancellation.

(xi) The Criminal Applications are disposed of in the aforesaid terms.

(xii) The Interim Application for intervention is also disposed of.

(xiii) To be listed on 6 June 2022 for reporting compliance and for passing appropriate orders for disbursal of the amount so deposited.”

4. It appears that thereafter one Interim Application was filed being Interim Application No. 1134 of 2022. This Court on 7 April 2022, passed the following order on the said interim application:

“1. This Application is filed by the Applicants for modification of the order dated 29 March 2022 passed by this Court in ABA Nos.2896/2021 and 470/2022.

2. The Applicant No.1 is seeking extension of time to surrender and to furnish an undertaking as required by the

said order.

3. I have heard the learned counsel for the parties. Perused record.

4. By a common order dated 29 March 2022, ABA No.2896/2021 and 470/2022 were disposed of in the following terms.

(i) The prayer for grant of anticipatory bail to the Applicant No.1 Anirudha Joshi stands rejected.

(ii) The Applicant Anirudha Joshi is granted time of two weeks to surrender before the Investigating Officer and to co-operate with the Investigating Agency.

(iii) The Applicant Anirudha Joshi to file an undertaking to that effect before this Court, with in one week from today.

(iv) In the event of her arrest, in Crime No.316of 2021, registered with Sinhagad Road Police Station, Pune, Applicant No.2-Rajani Balkrishna Joshi, be released on bail, on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount.

(v) In the event of her arrest, in Crime No.51 of 2022, registered with Sinhagad Road Police Station, Pune, the Applicant- Pallavi Anirudha Joshi, be released on bail, on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties, in the like amount.

(vi) The Applicants Pallavi Joshi and Rajani Joshi shall report to the Investigating Officer on 6 and 7 April 2022 between 11.00 to 1.00 p.m. and a sand when required by the Investigating Officer.

(vii) The Applicants shall surrender their passport before the Investigating Officer.

(viii) The Applicants are granted six weeks time to deposit the amount of Rs.15.5 Crores before this

Court. An undertaking to that effect be filed before this Court within two weeks from today.

(ix) The applicants shall not tamper with the prosecution evidence/witnesses.

(x) In the event of breach of any of the conditions, liberty to the prosecution to apply for modification/cancellation.

(xi) The Criminal Applications are disposed of in the aforesaid terms.

(xii) The Interim Application for intervention is also disposed of.

(xiii) To be listed on 6 June 2022 for reporting compliance and for passing appropriate orders for disbursal of the amount so deposited.

5. It is submitted by the learned counsel for the Applicant that the extension is sought as the Applicant No.1 Anirudha Balkrishna Joshi has to arrange for the amount of Rs.15.5 Crores and to furnish necessary undertaking.

6. The learned APP has opposed the extension, claiming that this is yet another attempt to gain time.

7. A perusal of the order dated 29 March 2022 shows that this Court has noticed that the Applicant has shown willingness for payment of the amount and has been seeking time since at least 9 June 2017 in respect of which the documents are produced on record in the original Application. In view of the fact that the Applicant No.1 had shown willingness to surrender and to deposit the amount, the order dated 29 March 2022 was passed.

8. On 6 April 2022, this Application was adjourned in order to enable the Applicants to produce the necessary undertaking. The learned counsel has filed an affidavit cum undertaking which is taken on record and marked 'X' for identification, in the following terms:

a) The Applicant will surrender himself on / or

before the expiry of time period granted by this Hon'ble Court in an Interim Application bearing No.1134/2022.

b) The Applicant is ready and willing to abide all the terms and conditions imposed upon the applicant in an order dated 29/3/2022 save and except the condition imposed at Clause Nos.2 and3 of the said order.

c) The Applicant is hereby ready and willing to abide such other terms and conditions if any imposed by this Hon'ble Court for the purpose of granting the relief as prayed by the Applicant in an Interim Application bearing No.1134 of 2022.

9. The affidavit-cum-undertaking does not confirm to the requirement of order dated 29 March 2022.

10. Considering the over all circumstances, no case for grant of extension is made out. The Application stands rejected.”

5. The Registry thereafter listed both the anticipatory bail applications for compliance on 6 June 2022 as neither the undertakings were filed nor the amount of Rs.15.5 crores was deposited in terms of order dated 29 March 2022.

6. It appears that, in the meantime the co-accused Anirudha Balkrishna Joshi, who was one of the applicants in both the applications for anticipatory bail, had filed the petitions for special leave to appeal against the order passed by this Court dated 29 March 2022 as by the said order his request for grant of anticipatory bail was rejected. This Court, therefore, deferred the compliance of order

dated 29 March 2022.

7. Thereafter, on 12 October 2022, this Court passed the following order:

“1. The applicant No.2 Rajani Balkrishna Joshi in Anticipatory Bail Application No. 2896 of 2021 and Pallavi Anirudha Joshi in Anticipatory Bail Application No. 470 of 2022 were granted pre-arrest bail vide order dated 29.03.2022. The application of applicant No. 1 Anirudha Balkrishna Joshi was rejected by this Court. The operative part of the said order indicate that the applicants Pallavi Joshi & Rajani Joshi were granted six weeks time to deposit the amount of Rs.15.5 Crores before this Court. They were directed to file undertaking to this Court. The order rejecting application preferred by Anirudha Balkrishna Joshi was challenged before Apex Court by preferring Petition for Special Leave to Appeal (Crl.) No.3521-3222-2022. The said petition was dismissed vide order dated 05.08.2022. The order is self operative. The said order mentions that inspite of opportunities being given to the said accused, the amount of Rs.15.5 Crores were not deposited.

2. The applicants Pallavi Joshi & Rajani Joshi have not complied the condition of depositing the amount.

3. Issue notice to Pallavi Joshi & Rajani Joshi, returnable on 15th November 2022 to show cause, why anticipatory bail granted to them should not be cancelled. Notice be served through concerned Police Station.”

8. In view of above order, both the anticipatory bail applications were listed on 15 November 2022. The following order was passed on 15 November 2022:

- “1. Heard learned Counsel for the parties.
2. Perused the order dated 29th March, 2022. Prima facie, it is apparent that the applicants have not complied with the order dated 29 March 2022, in as much as, they have not deposited the amount of Rs. 15.5 crores before this Court, within two weeks. Further, it also appears that on 2nd January, 2022, statement was made on behalf of the applicants, that they were ready and willing to pay 15.5 crores to clear the encumbrances on the land on/or before 17th June, 2022. This statement has also not been honoured.
3. In that view of the matter, it is clarified there is no interim pre-arrest protection in favour of the applicants.
4. Mr. Bhadbhade, learned Counsel for the applicant, seeks time to take out appropriate application seeking clarification of order dated 29th March, 2022.
5. Leave granted.
6. List the application for further consideration on 2nd December, 2022.”

9. The present Interim Applications thereafter came to be filed *inter alia* praying that the order dated 29 March 2022 be clarified and the applicants Rajni Joshi and Pallavi Joshi be permitted to remain on anticipatory bail without any direction to deposit any amount on the ground that the applicants are housewives, they do not have any source of income and the statement to deposit the amount of Rs.15.5 Crores was made by co-accused Anirudha Joshi.

10. The order dated 29 March 2022 was, however, passed and anticipatory bail was granted to the applicants Rajni Joshi and Pallavi Joshi on the basis of statement made by the learned counsel for the

applicants on instructions, that applicants would deposit Rs.15.5 Crore.

11. Admittedly, after passing of the order dated 29 March 2022, the Interim Application No.1134 of 2022 was filed by co-accused Anirudha Joshi, *inter alia*, with the following averments.

“6. That as per clause 8 of the said order dated 29/03/2022, applicants are directed to deposit 15.5 crore before this Hon’ble Court within the period of six week. However, it would become difficult for the applicant no.2 and Rajani Joshi for managing and communicating with the investors for such a huge amount hence, it is most important for the applicant no.1 to be away from the custody of the respondent police station for the period of one month and 20 days i.e. till 20th May, 2022 in order to communicate with the investors and arrange for such huge amount within the stipulated period of time as per clause 8 of the said order.”

12. If according to the applicants there were no instructions to make the statement on their behalf, about deposit of amount, then it was possible for the present applicants to seek clarification which now they are seeking at time of filing of said Interim Application No. 1134 of 2022. However, the same was not done.

13. Apart from it, the anticipatory bail applications were thereafter listed on 6 June 2022 for compliance, as the amount of Rs. 15.5 Crore, which the applicants Rajni Joshi and Pallavi Joshi

were directed to deposit within six weeks was not deposited. However, till that time also no steps were taken to seek clarification of the order dated 29 March 2022. Practically, six months thereafter for the first time on 15 November 2022, the request was made and time was sought to file the present applications when this Court issued show cause notice to the applicants Rajni Joshi and Pallavi Joshi as to why their anticipatory bail application should not be cancelled. According to me, the present applications are, thus nothing but abuse of court process.

14. The Interim Applications are thus rejected. The order dated 29 March 2022 granting anticipatory bail to the applicants Rajni Joshi and Pallavi Joshi is hereby recalled and their applications for anticipatory bail are hereby rejected.

(N.R. BORKAR, J.)