IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3362 OF 2022

Rajkumar Ramsevak Singh ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.379 OF 2022

Jayant Kanjibhai Patel ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

WITH
INTERIM APPLICATION NO.4239 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.3362 OF 2022

Jayant Kanjibhai Patel ...Applicant

In the matter between
Rajkumar Ramsevak Singh

Versus

The State of Maharashtra ...Respondent

...

Mr. Shrikant Rathi for the Applicant in ABA/3362/2022.
Mr. Mihir Desai, senior counsel with Mr. Shrikant Rathi for Respondent No.2 in APPLN/379/2022.
Mr. Kuldeep Patil i/b. Mr. Shashank Borade for the Applicant in APPLN/379/2022 and IA/4239/2022 and for Respondent No.2 in ABA/3362/2022.
Mr. S.V. Gavand, APP for the Respondent -State

CORAM: SMT. ANUJA PRABHUDESSAI, J.

ORDER PRONOUNCED ON : 28th AUGUST, 2023.

ORAL ORDER :-

1. Both these Applications arise from C.R.No.724 of 2022 registered at Azad Maidan Police Station, Mumbai, for offences under Sections 419, 420, 465, 467, 468, 471 and 120-B of the IPC.

2. Rajkumar Ramsevak Singh, the Applicant in Anticipatory Bail Application No. 3362 of 2022, filed under section 438 of Cr.P.C. seeks pre-arrest bail in the aforesaid crime. Whereas the Applicant in Criminal Application No.379 of 2022 is filed by the First Informant-Jayant Kanjibhai Patel under section 439(2) of Cr.P.C. for cancellation of pre-arrest bail granted to Respondent No.2 -Nitin Vasant Mane by the Additional Sessions Judge, Greater Bombay by order dated 24/11/2022 in Anticipatory Bail Application No.2535 of 2022.

3. The Applicant in Anticipatory Bail Application No. 3362 of 2022 shall be hereinafter be referred to as ‘the accused – Rajkumar Singh’, whereas Applicant and Respondent No.2 in Criminal Application No.379 of 2022 shall be hereinafter referred to as the First Informant-Jayant Patel and the accused – Nitin Mane, respectively.

4. The brief facts necessary to decide these Applications are as

under :-

5. The First Informant - Jayant Patel, was in search of land for catering business. He learnt that the land owned by Naresh Patil and others, surveyed under CTS No.1530/1 (New Survey Nos.93 Sub Division 1A admeasuring 939.70 sq.meters, and Survey No.93 1/B admeasuring 1050 sq.meters), situated at Linking Road was for sale. The First Informant contacted Nagraj Devendra, the Power of Attorney Holder of the heirs of Naresh Patil, who informed him that there was a civil dispute between the owners of the land and one Parvez Soli Irani and that the land is in possession of the Court Receiver.

6. The Power of Attorney-Mr. Nagraj introduced the First Informant to the accused-Nitin Mane, an Advocate by profession, who represented to him that he was defending the owners in the suit filed by Parvez Soli Irani. He assured the First Informant that he would get the Receiver discharged within 15 days. The fees of the accused-Nitin Mane were settled at Rs.50,00,000/- out of which Rs.15,00,000/- was to be paid in advance and the balance amount was to be paid after the settlement. Subsequently, the accused – Nitin Mane informed the First Informant that Parvez Soli Irani had agreed to settle the dispute and as per the proposed terms an amount of Rs.4 crores was to be paid to

Parvez Irani and the balance amount of Rs.2 crores to be paid to the owners of the land. The First Informant was told that upon payment of the said amount, the suit would be withdrawn and a deed of conveyance would be executed in his favour.

7. The First Informant accepted the proposal given by the accused-Nitin Mane and agreed to pay an amount of Rs.6 crores towards settlement of the said dispute and also agreed to pay professional fees to the accused-Nitin Mane. Accordingly on 12/07/2021 the First Informant issued a cheque for Rs.15 lakhs in the name of the Power of Attorney -Nagraj. The First Informant claims that the accused-Nitin Mane did not initiate settlement talks stating that he had not received the money from the Power of Attorney-Nagraj. Hence, on 06/12/2021 the First Informant transferred an amount of Rs.3,00,000/- in the account of the accused -Nitin Mane. The accused-Nitin Mane thereafter told him that settlement talks were in progress with Salek Khan, the Advocate representing Parvez Irani. On 24/01/2022 and again on 25/01/2022 the First Informant transferred an amount Rs.50,000/- and Rs.1,50,000/- in the account of the accused-Nitin Mane.

8. Some days later one person, who identified himself as Ravi Kumar and claimed to be an advocate of Parvez Soli Irani, called Jagdish Anchan, the friend of the First Informant and inquired about the settlement proposal. Said Anchan told said Ravi Kumar to discuss the matter with the accused-Nitin Mane. The accused-Nitin Mane subsequently confirmed that Ravi Kumar is an Advocate of Parvez Irani and reaffirmed that Ravi Kumar had agreed to settle the matter for Rs.6 crores, which was to be paid to Parvez Irani. The First Informant was further told that Parvez Irani would personally come to the High Court to sign the Memorandum of Understanding and withdraw the suit.

9. The First Informant expressed his inability to pay Rs.6 crores to Parvez Irani. The accused-Nitin Mane later told the First Informant that Advocate Ravi Kumar and Parvez Irani had agreed to settle the matter for Rs.4 crores. He also told the First Informant that he would engage another Advocate, who would assist him in finalizing the settlement. As per the instructions of the accused-Nitin Mane, on 09/02/2022 the First Informant transferred an amount of Rs.20,000/- in his personal account and on 10/02/2022 he transferred an amount of Rs.25,00,000/- in the account of the law firm of the accused-Nitin Mane.

10. On 08/04/2022, the accused-Nitin Mane instructed the First Informant to come to his office at Ballard Estate with an amount of Rs.4,00,00,000/- i.e. 1.50 crores in cheque and the balance amount of Rs.2.50 crores in cash. He was informed that Advocate-Ravi Kumar would be coming to his office alongwith the relevant documents and the MoU. Accordingly, the First Informant arranged the cash and he alongwith his son and his friend - Rahate went to the office of the accused-Nitin Mane. Some time later, one person came to the office of the accused-Nitin Mane. The said person, who was introduced as Advocate-Ravi Kumar showed the MoU and told the first informant to come to the Bar Room No.36 in the High Court premises alongwith the money. The accused -Nitin Mane and Ravi Kumar told the First Informant not to write the name of the payee on three cheques for Rs.50,00,000/- each. The accused Nitin Mane further instructed him to send him photos of the cheques on whatsapp and handover the cash and the cheques to Advocate-Ravi Kumar after execution of the MoU.

11 The First Informant, his son and friend-Rahate proceeded to the High Court. The First Informant went to the Bar Room and his son and friend waited with the cash in the car. The accused-Nitin Mane

and said Ravi Kumar came to the High Court alongwith another person. The accused-Nitin Mane and Ravi Kumar introduced the said person to the Notary-Kaushik as Parvez Soli Irani. They gave the MoU and the other documents to the Notary and assured him that the details of the cheques, which were left blank in the MoU, would be entered subsequently. The First Informant and the person, who was identified as Parvez Irani as well as the accused-Nitin Mane and Ravi Kumar signed the MoU in presence of the Notary -Kaushik. The accused-Nitin Mane and the person, who was identified as Parvez Irani left the place stating that the MoU would be filed before the Court. The First Informant went to the car alongwith Ravi Kumar and handed over to him two black bags containing cash of Rs.2,50,00,000/- and three cheques for Rs.50,00,000/- each. The First Informant claims that said Ravi Kumar returned Rs.10,00,000/- to his friend-Anchan, as good luck money.

12. On 18/04/2022 the First Informant received a phone call from a person, who disclosed his identity as Ravi Kumar and told him to talk to his friend -Anchan about the cheques issued by him. Some time later Govind Rahate, the friend of the First Informant told him to stop the payment of the cheques immediately. Accordingly, the First

Informant, through his son requested the bank to stop the payment. The First Informant suspected that the accused-Nitin Mane had cheated him by inducing in paying an amount of Rs.4,00,00,000/- (i.e. cash of Rs.2,50,00,000/- and three cheques for Rs.50,00,000/-each) and an additional amount of Rs.45,00,000/- as his professional fees, under the pretext of settling the dispute between Parvez Soli Irani and the legal representatives of Naresh Patil and others and getting the land transferred in favour of the First Informant.

13. The First informant claims that when he and his friends – Anchan and Rahate questioned the accused – Nitin Mane about the said fraudulent transaction, he disclosed that the person who was introduced as Advocate Ravi Kumar was in fact Advocate Sunil Budhwant and that Advocate -Budhwant and his friends – Advocate Navnath Devkate and the accused – Raj Singh had cheated him. The accused – Nitin Mane informed the First Informant that he had lodged a complaint against Advocate Budhwant and others and that he would return the money within two days. Subsequently, the accused – Raj Singh returned three cheques which were given to Ravi Kumar. The First Informant subsequently learnt that the accused – Nitin Mane was the main conspirator involved in cheating him and creating false and

fabricated documents. Whereas the accused -Raj Singh was involved in signing the MoU by impersonating -Parvez Soli Irani. Hence, he lodged the FIR against the accused - Nitin Mane and others for the offences as stated above.

14. By order dated 28/10/2022, learned Additional Sessions Judge – Smt. Ghule dismissed the application for pre-arrest bail filed by the accused – Rajkumar Singh mainly on the ground that the accused – Rajkumar Singh who is a taxi driver, had impersonated Parvez Irani and signed the false and fabricated MoU. Being aggrieved by this order, the accused – Rajkumar Singh has filed the Application (ABA No.3362 of 2022) under section 438 of Cr.P.C.

15. By order dated 24/11/2022, learned Sessions Judge – Mr. M.G. Deshpande allowed the application for anticipatory bail filed the accused – Nitin Mane. Learned Judge acknowledged that the bail of the co-accused Advocate Sunil Budhwant was rejected on merits. But opted to exercise discretion in favour of the accused-Nitin Mane on the ground that he had represented the Defendants in Civil Suit No.10 of 2021 and the email sent by the Salik Khan reveals that the accused-Nitin Mane had initiated settlement talks. Learned Judge held that the

accused -Nitin Mane had sent legal notices to the First Informant for non-payment of his outstanding legal dues and that he had also filed an application before Vikhroli Police Station against two persons for threatening him at the behest of the first informant over payment of his legal dues. Learned Judge held that the first informant had suppressed these material facts in the FIR. The learned Judge further held that the accused – Nitin Mane is a young lawyer and his arrest will impact his career and affect the entire family. With these observations, the learned Judge exercised the discretion under section 438 of Cr.P.C. in favour of the accused – Nitin Mane. Being aggrieved by this order, the first informant has filed the Criminal Application No.379/2022 under section 439(2) of the Cr.P.C.

16. Heard Mr. Mihir Desai, learned senior counsel for Respondent No.2-Nitin Mane, Mr. Shrikant Rathi, learned counsel for the Applicant and in ABA No.3362 of 2022, Mr. Kuldeep Patil, learned counsel for the Intervenor and Mr. S.V. Gavand, learned APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

17. It is a trite law that parameters for grant of bail and

cancellation of bail are entirely different. In ***Ms.X v/s. The State of Maharashtra and another 2023 All MR (Cri.) 2383 (S.C.)***, the Apex Court while reiterating considerations that ought to govern grant of anticipatory bail and cancellation of bail has referred to the previous decisions in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496, Masroor Vs. State of Uttar Pradesh and Anr. (2009) 14 SCC 286, Sushila Aggarwal and Others v. State (NCT of Delhi) and Anr. (2020) 5 SCC 1, Myakala Dharmarajam and Others v. State of Telangana and Another (2020) 2 SCC 743, and Pradeep Ram Vs. State of Jharkhand and Anr. (2019) 17 SCC 326.*

18. In *Prasanta Kumar (*supra) the Apex Court had highlighted the factors that ought to be borne in mind while considering the anticipatory bail application as under :-

> *"9. ... It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
> *(ii) nature and gravity of the accusation;*
> *(iii) severity of the punishment in the event of conviction;*

(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail. [See State of U.P. through CBI v. Amarmani Tripathi(2005) 8 SCC 21, Prahlad Singh Bhat v. NCT, Delhi and Another (2001) 4 SCC 280 and Ram Govind Upadhyay v. Sudarshan Singh and Others (2002) 3 SCC 598 "

19. In *Masroor* (supra) the Apex Court reiterated that elaborate examination of evidence and detailed reasons, which may prejudice the accused should be avoided. Nevertheless, there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. The Apex Court emphasised that the Courts ought to refrain from mechanically granting bail and further cautioned that absence of relevant considerations will make such an order susceptible to interference.

20. In *Myakala Dharmarajam* (supra), the Apex Court while holding that the Appellate Court or a superior Court can set aside an order granting bail if the concerned Court that granted bail, failed to consider the relevant factors, observed that:-

> *"9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."*

21. In ***Vipan Kumar Dhir vs. State of Punjab and Anr. Criminal 1161-1162 of 2021*** the Apex Court referred to the decisions in Daulat Ram (supra) and *X vs. State of Telegana and Another, (2018) 16 SCC 511* and observed that ***:-***

> *10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant*

material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked."

22. In ***Deepak Yadav v/s. State of U.P. and Anr. (2022) 8 SCC 559***, the Apex Court has reiterated that :-

30...bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer *conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in Dolat Ram And Others Vs. State of Haryana laid down the grounds for cancellation of bail which are :-*

> *i) interference or attempt to interfere with the due course of administration of Justice*
>
> *ii) evasion or attempt to evade the due course of justice*
> *(iii) abuse of the concession granted to the accused in any manner*
>
> *(iv) Possibility of accused absconding*
>
> *(v) Likelihood of/actual misuse of bail*
>
> *(vi) Likelihood of the accused tampering with the evidence or threatening witnesses.*

31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

a) Where the court granting bail takes into account irrelevant material of substantial nature and not *trivial nature while ignoring relevant material on record.*

b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

32. In Neeru Yadav Vs. State of Uttar Pradesh And Another (2014) 16 SCC 508 , the accused was granted bail by the High Court. In an appeal against the order of the High

Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under :-

> *"12…It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court"*

33. This Court in Mahipal vs. Rajesh Kumar Alias Polia and Another(2020) 2 SCC 118 held that: -

> *"17. Where a court considering an application*

for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

34. A two-Judge Bench of this Court in Prakash Kadam And Others Vs. Ram Prasad Vishwanath Gupta And Another 19 (2011) 6 SCC 189 held that:-

"18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. that factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

xxx

37. There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. This Court does not, normally interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with basic principles laid down in a catena of judgments by this Court."

23. Reverting to the facts of the present case, the facts narrated in the FIR, the statements of the witnesses including the statements of Parvez Soli Irani and the Notary-Kaushik, the CCTV footage, call details, invoices from Raymond show room-Colaba and the other material on record prima facie reveal that:-

(i) The first informant was in search of property for his catering business. He was informed that the property of Naresh Patil and others was for sale.

(ii) A Civil litigation between the legal representatives of

Naresh Patil and Ors. and Parvez Soli Irani was pending before this Court and a Receiver has been appointed in respect of the said property.

(iii) Nagraj Devendra, the Power of Attorney holder of the legal representatives of Naresh Patil introduced the first informant to the accused – Nitin Mane, a lawyer by profession, who agreed to bring about a settlement between the parties and get the property conveyed in favour of the first informant.

(iv) The fees of the accused Nitin Mane were fixed at Rs.50,00,000/- out of which Rs.15,00,000/- was to be paid as advance and the balance after the settlement.

(v) The initial amount of Rs.15,00,000/- was paid by cheque, which at the instance of the accused – Nitin Mane, was drawn in favour of Nagraj Devendra.

(vi)On 02/09/2021 the accused-Nitin Mane filed his vakalatnama in favour of some of the Defendants in Civil Suit No.10 of 2021.

(vii) The accused-Nitin Mane sent an email to Salik Khan, advocate for Parvez Soli Irani informing him that the

Defendants were ready to settle the matter and sought an appointment.

(viii) On 18/10/2021 Advocate-Salik Khan rejected the offer of settlement outright.

(ix) On 19/01/2022 Mr. Hrishikesh Kale i/b. the accused - Nitin Mane put in his appearance on behalf of some of the Defendants in Civil Suit No.10 of 2021.

(x) The accused Nitin Mane withdrew his vakalatnama on 09/02/2022.

(xi) Though the settlement proposal was rejected by Advocate -Salik Khan, the accused -Nitin Mane received from the First Informant total amount of Rs.30,20,000/- under the pretext that he would settle the dispute between Parvez Soli Irani and the legal representative of Naresh Patil and others.

(xii) The accused-Nitin Mane falsely represented to the First Informant that one Ravi Kumar was representing Parvez Soli Irani in Civil Suit No.10 of 2021 and further that Parvez Irani and his Advocate had agreed to settle the matter for Rs.6 crores, which was subsequently reduced to Rs.4 crores.

(xiii) The accused Nitin Mane prepared a false and fabricated MoU purportedly between Parvez Soli Irani and the First Informant for sale of the property for Rs.4,00,00,000/-.

(xiv) The accused -Nitin Mane procured a suit and other accessories from the Raymond show room at Colabo for the use of imposter -accused Raj Singh, a taxi driver, who signed the MoU by impersonating Parvez Irani.

(xv) The accused -Nitin Mane also signed the fake and fabricated MoU and got the same notarised before the Notary-Kaushik.

(xvi) The accused -Nitin Mane induced the First Informant in paying cash of Rs.2,50,00,000/- and Rs.1,50,00,000/- by cheques to Ravi Kumar under the pretext that the notarised MoU would be filed before the Court and the suit would be withdrawn.

(xvii) The CCTV footage shows the accused-Nitin Mane carrying the black bags, purportedly containing cash.

24. The aforesaid material prima facie reveals that the accused-

Nitin Mane was not only involved in cheating the First Informant and making a false and fabricated document but he was the kingpin of the conspiracy. Learned Sessions Judge Mr. Deshpande ignored the aforesaid material, which prima facie shows involvement of the accused -Nitin Mane in commission of the said crime and granted pre-arrest bail to the accused – Nitin Mane on the ground that :-

(i) The accused -Nitin Mane, being an Advocate, had represented the Defendants in Civil Suit No.10 of 2021.

(ii) The e-mail sent by Salik Khan, Advocate representing Parvez Irani makes a reference to the said suit and refers to the settlement talks.

(iii) The accused -Nitin Mane had sent notices to the First Informant demanding his professional fees

(iv) The accused-Nitin Mane had by application dated 10/10/2022 brought to the notice of Vikhroli Police Station that two persons had threatened him at the behest of the First Informant and told him that the First Informant would not pay the amount mentioned in the said two notices.

(v) That the arrest will impact the career of the accused-Nitin Mane, who is a young lawyer and that it will also affect his family.

25. The learned Judge has tried to portray that the-accused Nitin Mane was in fact discharging his professional duties as an Advocate and the money deposited in his account was towards professional fees. In this regard it is relevant to note that on 02/09/2021 the accused-Nitin Mane had filed his vakalatnama on behalf of some of the Defendants in Civil Suit No.10 of 2021 and on 13/10/2021 he sent an email to Mr. Salik Khan informing him that his clients are ready to settle the dispute amicably and requested to schedule a meeting. It is however relevant to note that by letter/e-mail dated 18/10/2021, Mr. Salik Khan, advocate for Parvez Irani rejected the offer of settlement outright and conveyed to the accused – Nitin Mane that his clients were not willing to negotiate with the very same people who had forcibly and illegally dispossessed him. A day later, Mr. Rushikesh Kale, instructed by N.M. Advocates and Solicitors, the firm of the accused – Nitin Mane represented the Defendants in the said suit, on which date the counsel for the plaintiff in the said suit had sought time to file an additional affidavit. This was the only appearance by and on behalf of the accused- Nitin Mane in the said civil suit. He withdrew his vakalatnama on 09/02/2022 on which date an amount of

Rs.20,000/- was transferred in his personal account and on 10/02/2022, an amount of Rs.25,00,000/- was transferred in the account of his firm. A strenuous attempt is made to project that a total amount of Rs.30,20,000/- was paid to this lawyer, who had allegedly just started his career, for this single appearance in the Court.

26. The email sent by Salik Khan and the appearance put in by the accused -Nitin Mane in Civil Suit No.10 of 2021 cannot prima facie be considered as a favourable circumstances since the records prima facie indicate that even after rejection of settlement proposal by Salik Khan, Advocate for Parvez Irani and withdrawal of appearance by the accused-Nitin Mane on behalf of the Defendants in Civil Suit No.10 of 2021, the accused -Nitin Mane introduced Ravi Kumar as an Advocate representing Parvez Soli Irani and falsely represented to the First Informant that Parvez Soli Irani and his Advocate Ravi Kumar had agreed to settle the matter for Rs.4,00,00,000/-. The accused -Nitin Mane thereafter prepared a false document and induced the First Informant in making the payment. Learned Judge has totally overlooked this material facts.

27. The learned Judge has also given undue importance to

notices dated 21/06/2022 and dated 26/09/2022 where the accused-Nitin Mane had alleged that the First Informant had agreed to pay to him legal consultancy fees of Rs.1,00,00,000/- but had paid only the first installment of Rs.25,00,000/-. The accused Nitin Mane had called upon the First Informant to pay the balance amount of Rs.75,00,000/- failing which he was threatened of legal action. It is pertinent to note that the First Informant is not a party to a Civil Suit No.10 of 2021. The accused-Nitin Mane through Hrishikesh Kale had represented some of the Defendants in the said suit only on 19/01/2022 and had thereafter withdrawn the appearance. Despite this, learned Judge has chosen to believe the narrative of the accused -Nitin Mane that the First Informant was liable to pay to him legal dues of Rs.1,00,00,000/- for his solitary appearance in the said Civil Suit.

28. Furthermore, the records reveal that pursuant to the phone call received on 18/04/2022 from one person, who had identified himself as Ravi Kumar, the First Informant suspected that something was amiss. He stopped payment of cheques handed over to Ravi Kumar. The First Informant learnt that the accused-Nitin Mane had kept the cash of Rs.2,40,00,000/- at Vikhroli in the house of his brother. Hence, the First Informant contacted the accused-Nitin Mane

and when questioned, he informed that Advocate-Sunil Budhwant, who had personated as Ravi Kumar had cheated him and he had already lodged a complaint against him. The First Informant suspected that the accused-Nitin Mane was also involved in cheating him. Hence, he reported the matter to the Additional Commissioner of Police, Mumbai on 10/05/2022. The notices issued by the accused – Nitin Mane and the application dated 10/10/2022 filed at Vikhroli Police Station appear to be an attempt to raise a defence which prima facie appears to be sham.

29. The records prima facie reveal that the accused -Nitin Mane as well as the co-accused -Sunil Budhwant, both lawyers by profession are involved in offence of cheating and fabricating documents. They have prima facie failed to adhere to and observe professional norms and ethics leading to professional misconduct. What is of greater concern is the audacity to commit the alleged offence in the precincts of the Court premises. Needless to state that such conduct tends to shake the faith of the people in the system of administration of justice. In fact, considering the gravity of the offence, the learned Judge rejected the application of the co-accused -Sunil Budhwant, but granted bail to the accused -Nitin Mane, based on irrelevant material, totally

divorced from material aspect of the case and settled principles of law.

30. The learned Judge appears to have been swayed by a thought that the arrest will impact career of a young lawyer and affect his family. Suffice it to say that keeping institutional interest in juxtaposition to individual liberty and interest, the endeavour of learned Judge ought to have been to uphold, protect and preserve integrity of the Institution. Instead the learned Judge has sought to enhance personal interest of the accused-Nitin Mane, prima facie, whose conduct is a blot on the noble profession. In such circumstances, grant of bail on misplaced sympathy was totally unwarranted and uncalled for. To say the least, the order of grant of bail is perverse and legally untenable and hence cannot be sustained.

31. The accusations against the accused-Nitin Mane as well as Raj Kumar Singh are of serious nature. It is stated that Advocate-Budhwant is not available for investigation. The identity of Ravi Kumar is not yet established. Whether Advocate-Budhwant personated as Ravi Kumar or whether he is genuinely a person by name Ravi Kumar is yet to be ascertained and the money is yet to be recovered.

32. Considering the above facts and circumstances and particularly the nature of the accusations and the material in support thereof, this is certainly not a case for exercise of discretion under Section 438 of the Cr.P.C.

33. Hence, the following order:-

(i) the Anticipatory Bail Application No.3362 of 2022 filed by the accused-Rajkumar Singh is dismissed.

(ii) The Criminal Application No.379 of 2022 filed by the First Informant-Jayant Kanjibhai Patel is allowed.

(iii) The order dated 24/11/2022 passed by the Additional Sessions Judge, Greater Bombay in Anticipatory Bail Application No.2535 of 2022 is set aside. Consequently, the Anticipatory bail granted to the accused-Nitin Mane is cancelled.

(iv) The Registrar-Judicial-I to forward a copy of this order to the Bar Council of Maharashtra and Goa for drawing proceedings against the accused-Nitin

Mane for professional misconduct.

34. The observations in the order shall not be construed as an expression on the merits of the case.

35. Learned counsel for the accused seeks extension of interim relief. Request rejected in view of the reasons recorded in the order.

36. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)