

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

ANTICIPATORY BAIL APPLICATION NO. 267 OF 2024

1. Pawankumar Basudev Agarwal
2. Smt. Kalpana Pawankumar Agarwal
3. Shivam Pawankumar Agarwal ..Applicants
Versus
State of Maharashtra & Ors. ..Respondents

Mr. Ghanshyam Upadhyay (appeared through V.C.) i/b. Law Juris
for Applicants.
Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 2 FEBRUARY 2024**

P.C. :

1. The Applicants are seeking transit anticipatory bail in connection with C.R.No.50 of 2021, registered at Karaya police station, Alipore, West Bengal. It was registered on 25.02.2021, under sections 409, 420 and 120B of the I.P.C.

2. This application is entertained by this Court pursuant to the ratio laid down by the Hon'ble Supreme Court in the case of *Priya Indoria Versus State of Karnataka and others* reported in *2023 SCC OnLine SC 1484*. The offence is registered in West

Bengal and, therefore, this Court has limited jurisdiction for protecting the applicants U/s.438 of the Cr.p.c., in the interest of justice, for a limited period. In consonance of the directions and the guidelines laid down by the Hon'ble Supreme Court in the case of *Priya Indoria (supra)* , I had issued notice to the concerned Public Prosecutor and the investigating officer at West Bengal, vide the order dated 31.01.2024. Considering the urgency, the matter was directed to be listed today. Learned counsel for the applicant has filed affidavit of service.

3. Learned APP of this Court makes a statement that, their office has not received any information from their counterpart in West Bengal. Therefore, I have considered grant of relief of transit anticipatory bail for a limited period to enable the applicants to approach a competent court in West Bengal to seek the relief U/s.438 of the Cr.p.c. on certain conditions.

4. The F.I.R. which is annexed to this application shows that the occurrence of the offence was after 07.04.2015. The registration of the F.I.R. was on 25.02.2021. Almost three years

have passed since registration of the F.I.R. The complainant was one Pawan Bajaj who was authorized representative of M/s. Parag Vinimay Pvt. Ltd. The complaint annexed to this application mentions that the complainant company entered into series of High Seas Sales Agreements with the accused company and supplied goods amounting to Rs.4,95,40,000/- as per agreed terms on good faith. The accused received all the consignments, but finally refused to make any payment to the complainant company. Thus the complainant company was cheated. It is alleged that the accused company had contravened the Foreign Trade Policy, as well, because the goods were accepted by the accused company as an importer. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicants submitted that, there is long history of bad relations between the parties. The applicants' company had lodged a complaint in the Metropolitan Magistrate's Court, at Andheri vide C.C.No.363/SW/2018 against M/s. Parag Vinimay Pvt. Ltd. (informant company in this case) and it's Directors in respect of the alleged offence pertaining to supply of 4000 MT lime stone. Pursuant to that complaint, an F.I.R. was

lodged vide MECR No.11 of 2018 at Juhu police station on 03.11.2018 for the offence of cheating and forgery. In connection with that F.I.R. the Directors of the company had obtained anticipatory bail.

6. The same company Parag Vinimay Pvt. Ltd. has filed a Summary Suit No.395 of 2018 before this Court on the original side. The subject matter of that summary suit was also the supply of lime stone and non payment by the present applicants' company. The claim made in that summary suit was for Rs.4,92,64,742/-. In that case, this Court on the original side had dismissed the Summons for Judgment vide the order dated 26.11.2018 and the applicants' company was granted unconditional leave to defend that suit. He submitted that, in the backdrop of this history, suppressing all these facts, the complaint was made to the Karaya police station, West Bengal by the informant company in this case. He submitted that, therefore, on merits the applicants have a good case. He further added that the applicant has made out a case for grant of transit anticipatory bail. He is aware that the applicants will have to obtain final relief in the nature of protection U/s.438

of the Cr.p.c. from the competent court in West Bengal having jurisdiction of Karaya police station. He submitted that the applicant Nos.1 and 2 are the senior citizens. The applicant No.2 is a lady. The applicant No.1 is 67 years of age. The F.I.R. is lodged much earlier, in the year 2021. For three long years no steps were taken pursuant to the said F.I.R. But suddenly, in January 2024, the applicants have received notice in connection with the said F.I.R. In January 2024, the applicant No.2 was completely bed ridden as she had fractured her leg. The applicant No.3 was out of the country on that day. Therefore, considering these difficulties, it was not possible for the applicants to immediately approach the competent court in West Bengal. Therefore, the applicants are seeking transit anticipatory bail from this Court.

7. Learned APP, as mentioned earlier, submitted that, she has no instructions from their counter part in West Bengal.

8. At this stage, it would not be proper to go into the merits of the matter because finally all these issues will have to be considered by the competent Court in West Bengal having

jurisdiction over Karaya police station. Today, I am considering the immediate difficulty faced by the applicants in approaching the competent court in West Bengal. In that context, the applicants have made out a case for grant of relief in the nature of transit anticipatory bail. The F.I.R. is lodged on 25.02.2021. Almost 3 years have passed. The applicants have demonstrated their genuine difficulty in approaching that Court immediately, therefore, some breathing time can be granted to the applicants. At the same time, certain conditions can be imposed on the applicants, so that, this limited liberty is not misused.

9. Before parting with this order, learned counsel for the applicant has made a request to file additional affidavit of service to correct certain paragraphs in the original affidavit of service. Such additional affidavit of service shall be filed immediately.

10. Hence, the following order :

ORDER

- i) In the event of his arrest in connection with C.R.No.50 of 2021, registered at Karaya police

station, Alipore, West Bengal, for a period of three weeks from today, the applicants be released on bail on their executing P. R. bonds in the sum of Rs.50,000/- each (Rupees Fifty Thousand each Only) with one or two sureties each in the like amount; subject to applicants depositing their passports with the nearest police station from their residence i.e. Juhu police station.

- ii) This order shall be in operation for a period of three weeks from today.
- iii) Within that period of three weeks the applicants are required to approach the competent court in West Bengal for appropriate relief.
- iv) The applicants shall produce the copy of this order before the competent court in West Bengal.
- v) The Application is disposed of.

(SARANG V. KOTWAL, J.)