



Diksha Rane

47. ABA 296-23.doc

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

ANTICIPATORY BAIL APPLICATION NO.296/2023

RAJESH KRISHNAN NAIR	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

**WITH
INTERIM APPLICATION NO.1499/2023
IN
ANTICIPATORY BAIL APPLICATION NO.296/2023
WITH
INTERIM APPLICATION NO.1500/2023
IN
ANTICIPATORY BAIL APPLICATION NO.307/2023**

SOHANLAL MOTILAL JAIN	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO.307/2023**

1. MAHESH DADABHAU KADAM	
2. VISHAL MORESHWAR SALVI	..APPLICANTS
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. A. M. Saraogi a/w. Adv. Daksha A. Parmar, Adv. Pallavi Kulkarni i/b. Adv. Prajot H. Jaggi for the applicants.
Smt. Megha Bajoria, APP for the State.
Adv. Akshay Shetty i/b. AVC & Associates for the complainant/intervener.
PSI S. L. Doke, Borivali Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 8, 2024.

P.C. :

- 1.** Heard learned counsel for the applicants, learned APP for the State and learned counsel for the complainant.
- 2.** These are the applications for pre-arrest bail. I am informed by learned counsel for the applicants that the applicant Vishal Moreshwar Salvi in Anticipatory Bail Application No.307/2023 died last month. The application, therefore, does not survive so far as the applicant Vishal Moreshwar Salvi is concerned.
- 3.** So far as the applicant/accused Mahesh Dadabhau Kadam in Anticipatory Bail Application No.307/2023 and the applicant/accused Rajesh Krishnan Nair in Anticipatory Bail Application No.296/2023 who stand accused in connection with C.R. No.1604/2022 dated 27/12/2022 registered with Borivali Police Station for the offence punishable under Sections 420 read with 34 of the Indian Penal Code, 1860 (hereinafter 'IPC' for short) are concerned, the allegations are that the accused assured the complainant that they would help the complainant in getting a loan of Rs.15 crores subject to payment of 4% legal charges. Accordingly, the complainant was required to pay a sum of Rs.60 lakhs. A

sum of Rs.24 lakhs was paid to applicant/ accused Rajesh Nair and a sum of Rs.20 lakhs was paid applicant/accused Mahesh Kadam. The incident is of the year 2017. The First Information Report (FIR) was registered on 27/12/2022.

4. Learned counsel for the complainant submitted that time and again the accused persons assured the complainant that they would refund the money which they had taken from the complainant. Learned counsel for the intervener submitted that some of the amount was paid by way of cheque. It is submitted that the offence of cheating is made out as right from inception the accused persons had an intent to cheat the complainant. It is submitted that the sons of the complainant were taken to Hyderabad on the pretext of collecting stamp papers. Though the bag containing stamp papers worth Rs.60,00,000/- was checked in at the airport, however, the bag was found missing at the destination point.

5. Learned APP for the State and learned counsel for the complainant opposed the applications.

6. By the interim orders dated 31/1/2023 and 1/2/2023, the accused persons were protected, and they were directed

to join the investigation. The applicants have joined the investigation. The applicants have reported to the investigating officer in compliance with the orders passed. It is submitted by learned APP as well as learned counsel for the complainant that there are criminal antecedents of a similar nature reported against the applicants. So far as applicant/accused Mahesh Kadam is concerned, there is one C.R.No.47/2015 was registered with Shahu Nagar Police Station, under Sections 420, 465, 467, 468, 471, 120-B read with 34 of the IPC. So far as applicant/accused Rajesh Nair is concerned, there are two offences registered against him, first is C.R. No.424/2014 registered with Thenmala Police Station under Sections 279 of the IPC read with 185 of the Motor Vehicle Act and second is C.R.No.657 under Sections 283 of the IPC registered with Thiruvananthapuram Police Station, Kerala. The criminal antecedents should not be a factor to deprive the applicants the facility of pre-arrest bail in the facts and circumstances of this case.

7. *Prima facie*, I find that there is a gross delay in registering the FIR. The grievance of the complainant is that the accused persons had collected the money on the

promise that they would ensure that the complainant is in receipt of loan of Rs.15 crores. It is the case of the complainant that from time to time the complainant demanded return of the amount which the accused persons failed to do so. It is submitted by learned counsel for the complainant that the accused persons should be directed to deposit some money in this Court to show their bonafides. It is not possible to convert the present proceeding into a recovery proceeding. It is open for the complainant to resort to appropriate remedies for recovery in accordance with law by resorting to appropriate proceedings.

8. The complainant wants his money back. Considering that there is a delay in registering the FIR, that the applicants have joined the investigation, and they are willing to co-operate with further investigation in the facts and circumstances of the present case, I am inclined to allow the applications. The custodial interrogation is not necessary. Hence, the following order.

ORDER

- (a) The anticipatory bail applications are allowed.
- (b) In the event of arrest in connection with C.R.

No.1604/2022 dated 27/12/2022 registered with Borivali Police Station, applicants - (1) Rajesh Krishnan Nair and (2) Mahesh Dadabhau Kadam shall be released on bail on furnishing P.R. bonds to the extent of Rs.50,000/- each with one or two sureties each of the like amount.

(c) The applicants shall co-operate with the investigation and attend the investigating officer of the concerned police station on 12/4/2024 and 13/4/2024 between 11.00 a.m. and 1.00 p.m. and thereafter, as and when called.

(d) In the event, the charge-sheet is filed, the applicants shall attend the investigating officer of the concerned police station twice a month i.e. on 1st and 3rd Monday of every month between 11.00 am and 1.00 pm till further orders as may be warranted by the trial Court.

(e) The applicants shall deposit their passports with the trial Court. If they do not have the passports, they shall file the affidavits to that effect before the trial Court.

(f) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(g) The applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

9. The applications are disposed of.

10. In view of the disposal of the anticipatory bail applications, nothing survives for consideration in the interim applications. The same are also disposed of.

(M. S. KARNIK, J.)