

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

ANTICIPATORY BAIL APPLICATION NO.3699 OF 2023

Hiral Chandrakant Jadhav Applicant
Versus
The State of Maharashtra Respondent

Mr. Shailesh Kharat, Advocate a/w. Ms. Sayyed Akhtar Jaha
for the Applicant.

Ms. Sharmila S. Kaushik, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 03rd JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.948/2023 dated 21.10.2023 registered at Dahisar Police Station, Mumbai under Sections 420, 465, 467, 468, 471 of the IPC. Subsequently, Section 466 of IPC is added.

2. The offence is extremely serious. The Applicant is an Advocate. The first informant had approached her for preferring an application for bail for her husband, who was arrested by the Dahisar police in connection with their C.R.

No.927/2021. The main offence was under Section 302 of IPC against the informant's husband. The present FIR mentions that the Applicant had assured the informant that she would get bail of her husband and for that purpose had asked Rs.65,000/- as her fees. In August, 2022, the informant paid her Rs.65,000/-. After that on 11.8.2022, the Applicant preferred the bail application. On 28.10.2022 the Applicant called the informant telephonically and informed her that the informant's husband was granted bail by the Presiding Officer at Dindoshi Court for Rs.25,000/-. The first informant was told the name of the Presiding Officer. The Applicant called the informant to High Court for paying Rs.25,000/-. The informant and her relatives came to High Court. They gave Rs.25,000/- to the Applicant. The Applicant handed over a sealed brown-paper envelope. The Applicant told them that the envelope contained bail order and a receipt for Rs.25,000/-. She told them to give that envelope to the officers of Thane Prison.

3. Immediately on 29.10.2022, at about 9.00 a.m.,

the informant and her relative went to Thane Prison and put that envelope in the box meant for depositing the bail orders. Till about 3.00 p.m. on that day, the informant did not get any information about her husband. Therefore, she made further enquiries. At that time, the officers from Thane Prison told her that the envelope did not contain the receipt for Rs.25,000/- and the documents were incomplete, therefore, her husband could not be released on bail. The documents were returned to her. The informant looked at those documents and found a copy of the order passed by the Presiding Officer i.e. the Additional Sessions Judge at Dindoshi; but the envelope did not contain the receipt for Rs.25,000/-. The informant contacted the Applicant but she gave evasive answers.

4. On 31.10.2022, the informant went to the Applicant's office. The Applicant told them that the documents were proper but because of the mistake of the officers from the jail, the informant's husband was not released. The Applicant again gave another envelope and asked them to deposit it in the same box. On this occasion as

well, it was not acted upon and the documents were returned.

5. Thereafter the informant met the Applicant in the Court of Session at Dindoshi. Again the Applicant gave a photocopy of the bail order and a copy of the receipt of Rs.25,000/-. On 7.11.2022, again the informant went to Thane Central Prison but this time also the informant's husband was not released on bail. The Applicant told the informant that somebody had complained against her husband and, therefore, he was not being released on bail. The informant got suspicious and checked the Portal of E-Courts. She did not find the bail order. She went to the Registry of Dindoshi Sessions Court. She was told that no such documents, viz., the bail order and the receipt were issued from their department. The informant realized that she was cheated. She confronted the Applicant. At that time, the Applicant tried to scare her by telling that the witnesses of that particular case had complained against the informant's family. The informant was satisfied that the Applicant was playing mischief and she had cheated the informant, therefore, she

lodged this FIR. The investigation was carried out. The Applicant is apprehending her arrest.

6. Heard Shri Shailesh Kharat, learned counsel for the Applicant and Smt Sharmila Kaushik, learned APP for the Respondent-State.

7. Learned counsel for the Applicant submitted that the document in question i.e. the purported bail order was not acted upon and, therefore, no offence is made out. He submitted that there was difference between the 'intent to defraud' and 'intent to deceive'. There was neither any wrongful gain to anyone nor any wrongful loss to another. It cannot be said that the Applicant had acted dishonestly. He submitted that, there was nothing to show that the Applicant had acted 'dishonestly' or 'fraudulently'. Therefore, the offence under Section 465 of IPC and all other aggravated forms of the offence of forgery are not attracted in this case. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Jibrial Diwan Vs. State of Maharashtra** as reported in **(1997) 6 SCC 499** to support his contention to this effect.

8. Learned APP strongly opposed these submissions. She produced the papers of investigation carried out so far. The investigation papers include a copy of the bail order given by the Applicant to the first informant which was a forged bail order. Said bail order was purportedly passed on 22.10.2022 which mentions the Applicant's name as the Advocate for the informant's husband Ishwar Naidu. That order was found to be forged. The Presiding Officer named in that order had sent explanation to the Principal District Judge, Sessions Court, Dindoshi clearly stating that the said order was not passed by him. In fact, the said bail application was decided by another Additional Sessions Judge on 7.2.2023 and the application was rejected. The order dated 7.2.2023 also mentions the name of the present Applicant as the Advocate for the said accused Ishwar Naidu (informant's husband).

9. Thus, all along, the Applicant was very much aware that the informant's husband's bail application was not allowed. It was ultimately rejected on 7.2.2023. But, even prior to that no order was passed granting bail to the

informant's husband. In spite of that, on multiple occasions, the Applicant knowingly gave forged order of bail regarding the informant's husband. There was a reference to the receipt of Rs.25,000/- as well. Both these documents are forged documents beyond reasonable doubt even at this stage.

10. I am strongly disagreeing with the submissions made by learned counsel for the Applicant that there was no 'dishonest intention' or 'fraudulent intention' on the part of the Applicant. In fact, her act cannot be described in any other manner but 'dishonest' and 'fraudulent'. The investigating agency has now applied Section 466 of IPC as well, which reads thus :

“466. Forgery of record of Court or of public register, etc.

Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).”

11. I do not agree with the learned counsel for the Applicant that the act of the Applicant has not caused any harm to any person. The facts show that the Applicant had taken substantial amount from the informant. Though learned counsel submitted that the said amount was subsequently returned, it does not wash out the offence committed by the Applicant. The informant could have pursued the bail application of her husband in accordance with law. Due to the acts of the Applicant, the informant had lost precious substantial period. She was kept in the dark about the fate of the bail application preferred before the Sessions Court at Dindoshi. The informant and her family has suffered immense mental trauma.

12. The ingredients of all the offences mentioned in the FIR, including Section 420 of IPC, are clearly made out.

This offence does not only cause harm to the victim in this case, but, it is also fundamentally detrimental to the entire legal system. This kind of offence corrodes the faith which the public has in the entire system.

13. No leniency whatsoever can be shown to the Applicant. No words are sufficient to deprecate the practice adopted by the Applicant, being an Advocate having relationship with the litigant based on trust. This is not a case where any kind of leniency can be shown to the Applicant at this stage. Her custodial interrogation is necessary to find out her accomplices. The manner in which the offence is committed with confidence shows, there is a strong possibility that this may not be an isolated instance. To unearth such similar instances, her custodial interrogation is necessary.

14. The Application is accordingly dismissed.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
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