

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 963 OF 2024**

Nitin Vasant Mane

...Applicant

Versus

The State of Maharashtra

...Respondent

- Dr. Abhinav Chandrachud I/B Mr. Bakul Bhosale, for the Applicant.
- Ms. Megha Sumit Bajoria, APP for Respondent – State.
- Mr. Kuldeep Patil i/b Nikhil G. Hire, for Complainant / Intervenor.
- Mr. S.B. Ithape, PSI, Azad Maidan, Police Station, present.

CORAM : MANISH PITALE, J.

DATE : 19th July, 2024.

P. C. :

1. Heard, Dr. Abhinav Chandrachud, learned counsel for the applicant, Ms. Megha Bajoria, learned APP for the State and Mr. Kuldeep Patil, learned counsel having instructions to appear on behalf of the first informant.

2. The applicant, an advocate by profession, is accused No.1 in the subject First Information Report No.0809 of 2022 (FIR), dated 16th October, 2022, registered at Police Station Azad Maidan, for the offences under Sections 420, 419, 465, 467, 468, 471 and 120-B of the Indian Penal Code (IPC).

3. Initially the applicant was granted anticipatory bail by the Sessions Court, but subsequently by an order dated 28th August, 2023, this Court cancelled the anticipatory bail granted to the applicant and eventually

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he was arrested on 10th September, 2023. He has remained behind bars since then.

4. This Court has perused the material on record, which includes the FIR and the charge-sheet, as also the documents annexed to the charge-sheet.

5. In the order dated 28th August, 2023, passed by this Court in Anticipatory Bail Application No. 3362 of 2022 with Criminal Application No. 379 of 2022, the narration of events pertaining to the present case has been summarised in paragraph No.23 of the said order. This Court is conscious of the fact that in the very same order, the Court has specifically recorded that the said order would not be taken as a comment on merits of the case, but since the events have been narrated chronologically, this Court is inclined to quote the relevant portion of the said order dated 28th August, 2023, which brings out the allegations against the applicant. The said portion reads as follows :

“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.”

6. As noted above the applicant was arrested on 10th September, 2023, and he has remained behind bars since then. The learned counsel appearing for the applicant submits that in the present case, although the allegations are serious on the basis of which offences have been registered against the applicant, including offences concerning cheating and forgery, certain statements of witnesses available on record along with the charge-sheet indicate that the applicant had retained the huge cash amount under the belief that his client and the opposite party would eventually be able to settle the dispute in question. In that regard reliance is placed on the statement of Navnath Pundlik Devkate, also an advocate. It is submitted that the aforesaid statement would indicate that when the applicant was questioned by the said

witness to why the applicant had retained the huge cash amount, it was specifically stated that the applicant was under the impression that the opposite party Parvez Irani would be coming from Dubai and thereafter, the entire amount would be handed over to that person. Reliance is placed on the statement of another advocate i.e. the advocate representing the opposite party in the civil litigation, Salek Babar Sher Khan. In the said statement, the said witness specifically claimed that on 19th April, 2022, the applicant along with an elderly person had gone to Parvez Irani for further undertaking discussion regarding settlement but Parvez Irani did not discuss the matter and thereafter the applicant along with the elderly person came to the office of said witness and it was made clear that the settlement was not possible.

7. On this basis, it is submitted that although the incident in question is said to have occurred on 08th April, 022, the statement of the said witness indicates that discussions regarding settlement were being undertaken even after the said date and at least till 19th April, 2022. On this basis, it is claimed that the applicant having retained the cash amount does not make out the case of cheating against the applicant, as the essential ingredient of the said offence is that the actions of the accused should have been undertaken right from the inception with the intention of cheating.

8. It is further submitted that as per settled law “bail is the rule while jail is an exception.” It is submitted that in the present case, as the applicant

has remained behind bars since 10th September, 2023, no purpose would be served by continuing his custody, particularly when the charge-sheet is already filed and the investigation is complete.

9. On the other hand, learned APP has vehemently opposed the prayer made in the application. It is submitted that in the present case the statement of the informant and also the statements of other witnesses make out a strong *prima facie* case against the applicant for offences of cheating and forgery. The material on record shows that the applicant, with the help of co-accused, impersonated Parvez Irani on the date of the incident and took cash from the informant under the pretext of settling the dispute with Parvez Irani. The aforesaid huge cash amount was retained by the applicant. On the date of the incident, with the help of the co-accused person who was impersonating Parvez Irani, a document styled as Memorandum of Understanding was executed before the notary in a bar room within the premises of building of this High Court. It is submitted that, considering the seriousness of the allegations and the material supporting the same, no indulgence can be shown to the applicant.

10. As regards the statements of the witnesses upon which learned counsel for the applicant has placed reliance, it is submitted that the aforesaid statement cannot be of any assistance to the applicant, simply for the reason that the huge cash amount was retained by the applicant and there is no

explanation for the same.

11. As regards bail being a rule and jail an exception, it was submitted that there cannot be a quarrel with the said proposition of law, but the conduct of the applicant is such that enlarging him on bail is fraught with the risk of witnesses being influenced. In support of the said submission, it is brought to the notice of this Court that the applicant had made an attempt to cause offence being registered under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the informant with the help of an individual. An impression was sought to be created that the informant had called the applicant and abused him in the name of his caste. Enquiries by the police revealed that no such incident took place. It is also brought to the notice of this Court that a report pertaining to non-cognizable offence was registered at the behest of said Navnath Pundlik Devkate against the applicant as the applicant had threatened the said witness. On this basis, it is submitted that since the applicant has undergone only about 10 months of imprisonment, this Court may dismiss the present application.

12. This Court has considered the rival submissions in the light of the material placed on record. The chronology of events as noted hereinabove, indicates the nature of allegations leveled against the applicant, who is a practicing advocate. Apart from the fact that the allegations leveled against the

applicant indicate conduct unbecoming of a professional, *prima facie* case is made out showing ingredients of the alleged offences. The applicant has no explanation for retaining the huge cash amount taken from his own client i.e. the informant under the pretext of having the the civil dispute settled. The applicant is alleged to have impersonated Parvez Irani with the help of co-accused person, who is absconding. The allegations become all the more serious when the services of such co-accused person were utilized by the applicant for forging a Memorandum of Settlement before the notary within the premises of the building of this Court.

13. The statements of witnesses bring out the *modus operandi* adopted by the applicant to give effect to his intention. There is sufficient material to make out a *prima facie* case against the applicant as regards the ingredients of offences of cheating and forgery. Therefore, the applicant has failed to make out a case on merits before this Court.

14. There can be no quarrel with the proposition of bail being a rule and jail being an exception but, this Court is not holding against the applicant only on the basis of the seriousness of the allegations. The material on record does make out a strong *prima facie* case against the applicant. Being an advocate and a person having knowledge of law, this Court finds that enlarging the applicant on bail runs the risk of the witnesses, as well as the evidence, being tampered. The learned APP has indeed brought to the notice

of this Court at least two instances indicating the propensity of the applicant to indulge in such activities. The report of the Police Inspector dated 10th October, 2023, shows that the applicant made an attempt to falsely implicate the informant for offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This can be said to be an attempt on the part of the applicant to dissuade the informant from pursuing the present case. The report of non-cognizable offence registered against the applicant at the behest of Navnath Pundlik Devkate, one of the witnesses in the present case, also shows that the applicant undertook actions to influence the witnesses, thereby indicating that enlarging him on bail would not be appropriate in the facts and circumstances of the present case. In any case, the applicant has presently undergone only 10 months of imprisonment and it does not qualify him to seek relief on the basis of the settled position of law that long period of incarceration itself can be considered as a ground for enlarging the accused on bail.

15. In view of the above, the application is dismissed.

(MANISH PITALE, J.)