

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

Anticipatory Bail Application No.1600 of 2024

Dhanashree Pramod Buga

Age- 40 years, Occupation-Housewife

Residence of-178, Shree Mata Niwas,

Buga Galli, Khar Dantpada, Khar West,

Mumbai-400052

Byculla Prison.

... Applicant

v/s.

1. The State of Maharashtra

(At the instance of Sr Inspector of Police)

Khar Police Station, Khar (West),

Mumbai – 400 054.

2. Mr Sagar Vitthal Teke

Add:- Near Custom House, Laxmi Nagar,

Viranpada, Khar Danda, Khar (W),

Mumbai – 400 052.

... Respondents

Mr Abhishek Mishra, a/w. Tauqeer Siddiqui, for the applicant.

Mr Nitin B Patil, APP, for the respondent/ State.

Ms Swapna P Kode, for respondent No.2/ informant.

Coram: R.N. Laddha, J.

Date: 8 July 2024

P.C. :

By the present application, the applicant seeks pre-arrest bail in connection with CR No.716 of 2023, registered at Khar Police Station, Mumbai, for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

2. The prosecution alleges that the applicant dishonestly induced respondent No.2/ informant to transfer Rs.5 lakhs towards a heavy security deposit for Room No.178 in Mata Niwas Building at Khar West, Mumbai, and did not hand over its possession. The applicant is also accused of renting this room to other individuals by accepting heavy security deposits.

3. Mr Abhishek Mishra, the learned Counsel appearing on behalf of the applicant, asserts the applicant's innocence and submits that the applicant has been falsely implicated in the present crime. He contends that another crime bearing CR No.492 of 2023 has been registered against the applicant for the same transaction, where the investigation is over, and a charge sheet has been filed. The learned Counsel further submits that the applicant is merely an agent and the respondents have given a criminal colour to a civil transaction. Nothing is to be recovered or discovered at the applicant's instance; thus, her custody is unnecessary. The applicant is ready to abide by the conditions that this Court may impose.

4. Mr Nitin Patil, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Swapna Kode, the learned Counsel appearing on behalf of respondent No.2/ informant, in unison, submit that the applicant by entering into

leave and license agreements has induced individuals to transfer huge sums towards security deposits for Room No.178, and never hand over its possession to them. When the informant deposited Rs.5 lakhs, the applicant did not deliver the room's possession and refused to return the deposited amount. Furthermore, the learned APP submits that the applicant has received an amount of Rs.54 lakhs. The applicant has criminal antecedents, and a similar offence has been registered against her for following the same *modus operandi* for a different room. Other victims have also come forward. The investigation is in progress, and the applicant's custody is required to ascertain the persons involved in this racket and the details of the transactions. The deposited monies are yet to be recovered. Mr Patil, the learned APP, also submits that if the applicant is granted bail, she may tamper with the evidence or influence the witnesses.

5. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula

cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

6. Further, the Hon'ble Supreme Court in *Ashok Kumar Vs State of Union Territory Chandigarh*² observed as follows:

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

7. After examining the records, it transpires that the present crime is distinguishable from CR No.492 of 2023, although both are registered against the applicant at the same Police

1 2024 SCC OnLine SC 282.

2 SLP (Cri.) No.9949 of 2023 dated 1 March 2024

Station for an analogous transaction. A perusal of the report in CR No.492 of 2023 reveals that the applicant, along with others, induced one Durgesh Pawar, the informant therein, to deposit a sum of Rs.8 lakhs for renting Room No.422 in Patil Pada, Khar, Mumbai. The applicant and others neither delivered the possession of Room No.422 nor returned the deposited sum to Durgesh. At the outset, the transactions, victims, and location in CR No.492 of 2023 are different and separate from the present crime, i.e., CR No.716 of 2013. In the present crime, respondent No.2/ the informant transferred Rs.5 lakhs to the applicant via online transfer modes for renting Room No.178 in the Mata Niwas Building, Khar, Mumbai, on a heavy security deposit. The applicant delayed delivering the possession of the room to the informant. Frustrated, the informant repeatedly demanded the applicant refund the deposited sum. However, the applicant responded evasively and never returned the money. The ongoing investigation has disclosed that the applicant has duped other individuals using the same technique. It also appears that more victims of the applicant's alleged crime are coming forward. The investigation is in progress, and the money is yet to be recovered. Moreover, the applicant has criminal antecedents and is in judicial custody for another similar offence. The applicant's custody is deemed necessary to uncover the persons involved in the crime and the money trail.

Given the above, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the present application stands rejected.

(R.N. Laddha, J.)