

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

Anticipatory Bail Application No. 1956 of 2024

Kailash Rambali Jaiswar
Age 53 years, Occ. Business,
R/o. Room No.15, 10/10, Behind
Century Bazar, Dr. A. B. Road,
Kalyandas Udyog Bhavan, Prabhadevi,
Mumbai - 400 025.

...Applicant

Vs.

The State of Maharashtra
Through Police Station Officer,
Dadar Police Station, Mumbai.

...Respondent

Mr Nitin Gaware Patil a/w. Shubham Wadne and Shantanu Kolhe i/b.
Abhishek Nagode, for the applicant.

Mr Amit A Palkar, APP, for the respondent/ State.

PSI Mahesh Patankar, Dadar Police Station, is present.

Coram: R. N. Laddha, J.

Date: 24 July 2024

P.C.

This is an application for pre-arrest bail filed by the applicant, who is apprehending arrest in CR No.510 of 2022, registered at Dadar Police Station, Mumbai, for the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code.

2. According to the prosecution, the applicant and the co-accused conspired and, in exchange for the promise of receiving a flat under the SRA Scheme, accepted a substantial amount of money from the informant.

3. Mr Nitin Gaware Patil, the learned Counsel appearing on behalf of the applicant, submits that the co-accused have already been granted bail, and no notice was issued under Section 41A of the Code of Criminal Procedure, 1973 ('CrPC').

4. Mr Amit Palkar, the learned Additional Public Prosecutor representing the respondent/ State, submits that the applicant was served with a notice under Section 41A of CrPC but he has been avoiding to appear before the investigating agency. The investigation is in progress.

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. A perusal of the records reveals that the present application is a second bail plea seeking pre-arrest bail. The applicant's previous

1 2024 SCC OnLine SC 282.

application was denied by this Court on 4 January 2023. Since then, the applicant has not cooperated with the investigation. The present application has been filed a year after the rejection of the earlier application, and there seems to be no change in the circumstances. Additionally, there is material to indicate that the applicant has been closely associated with the co-accused in collecting substantial sums from gullible investors. A total of Rs.1,05,00,000/- in cash and Rs.30,00,000/- by cheque has been collected, yet the promised flats have not been delivered. The witness states that money was handed over to the applicant and he was present in all the meetings. There is a documented promise, bearing the applicant's signature, regarding the flat delivery. The applicant's involvement in the present crime is evident from the available material on record. Notably, despite the rejection of the earlier anticipatory bail application by this Court on 4 January 2023, the applicant did not make himself available for investigation, and filed the present application on 5 January 2024, a year after the previous rejection.

7. Considering the nature of the allegations, the applicant's conduct, and the ongoing investigation, the learned APP's argument against granting pre-arrest bail is justified. In the circumstances, the application stands rejected.

(R. N. Laddha, J.)