IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.2223 of 2024

Siddhartha Shyamal Roy
R/O Tower-2, II-D
Rosedale Garden Apartment
Owners Association, AA-II,
New Town Kolkata,
West Bengal – 700 160 … Applicant

Versus

State of Maharashtra
Through SHO
Wadala TT Police Station … Respondent

Mr Sanjay Dubbey, along with Ms Puja Bhatt, for the applicant.
Mr Arfan Sait, APP, for the respondent/ State.
PI Shekhar Shinde, EOW, Unit-5, Mumbai, is present.

MAMTA AMAR KALE Digitally signed by MAMTA AMAR KALE Date: 2024.08.09 19:04:03 +0530

Coram: R.N. Laddha, J.
Date: 7 August 2024

P.C.:

This is an application for pre-arrest bail filed by the applicant in connection with CR No.421 of 2023, registered at Wadala TT Police Station, Mumbai (investigated by the Economic Offences Wing (EOW), Unit-V, Mumbai), accusing him of committing the offences punishable under Sections 406, 420, 408, 465, 467, 468, and 471, read with 34 of the Indian Penal Code.

2. In a nutshell, it is the case of the prosecution that the applicant, employed at Alliance Motors Ghana Limited, embezzled Rs. 31.20 crores by fabricating invoices, vouchers, and digital records.

3. Mr Sanjay Dubbey, the learned Counsel appearing on behalf of the applicant, contends that upon the applicant receiving notices from the EOW, Mumbai, the applicant cooperated with the investigating agency by attending its office on multiple occasions viz., 14 August 2023, 19 August 2023, 29 August 2023, 31 August 2023, 1 September 2023 and 4 September 2023, providing relevant documents and surrendering electronic devices. Following this cooperation, the applicant was permitted to travel abroad on 7 September 2023 to join his new job. The learned Counsel asserts that the applicant has been falsely implicated in the present crime, and nothing is to be recovered from him. Furthermore, the applicant is ready and willing to cooperate with the investigation.

4. Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/ State, contends that the applicant held a managerial position at Alliance Motors Ghana Limited and controlled the company's bookkeeping. The applicant unjustly enriched himself by preparing forged documents and facilitating money transfers to various entities, totalling Rs.31.20 crores. The offence is serious, and the investigation is at a nascent stage. The applicant's custody is necessary to trace the money trail and identify the individuals involved. While the applicant cooperated during the preliminary inquiry before the offence was registered, Mr Sait highlights that since 7 September 2023, the applicant remained unavailable for investigation and left the country without disclosing his residential or contact information. Mr Sait draws the attention of this Court to the look-out circular and the

proclamation dated 12 March 2024 to emphasise that the applicant is absconding and opposes the grant of pre-arrest bail. To bolster his submissions, he cites the decision of the Hon'ble Supreme Court in ***Prem Shankar Prasad vs The State of Bihar***[1].

5. The limited question before this Court is whether the applicant, in the circumstances of the present case, is entitled to the relief of pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure, 1973.

6. It is a settled position in law that to grant anticipatory bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. The Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail, taking into account the specific circumstances of each case. There is no one-size-fits-all approach. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. Moreover, an accused individual cannot invoke this extraordinary power when an arrest warrant or proclamation has been issued, except in extreme and exceptional situations. However, persistent defiance of orders and continued absconding would disqualify a person from receiving such relief. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in ***Srikant Upadhyay v. State of Bihar.***[2]

[1] Criminal Appeal No.1209 of 2021 dated 21 October 2021.
[2] 2024 SCC OnLine SC 282.

7. Upon perusing the records, it appears that the applicant, who managed the company's financial affairs, stands accused of misappropriating Rs.31.20 crores by preparing forged and fabricated documents and electronic records. The applicant participated in the preliminary enquiry on six occasions but subsequently became untraceable after the crime was reported on 9 September 2023. Consequently, a look-out circular and proclamation were issued. In the meantime, the applicant initiated legal proceedings and affirmed the pleadings in Mumbai and Kolkata. Despite the issuance of the look-out circular and the proclamation, the applicant has not appeared before the concerned authorities. Furthermore, the applicant has not sought to cancel the warrant and proclamation issued against him. The applicant appears to be the intended recipient of the alleged sum, which is yet to be recovered. *Prima facie,* the material on record indicates the applicant's involvement in the crime. The offence is serious, and the investigation is at a nascent stage, necessitating the applicant's custodial interrogation. Additionally, the law regarding granting anticipatory bail to an absconder or a proclaimed offender is well settled.

8. Considering the above and the fact that the investigation is in progress, the learned APP is justified in contending that this is not a fit case for the grant of pre-arrest bail. As a result, the application stands rejected.

(R.N. Laddha, J.)