

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

Anticipatory Bail Application No.2387 of 2024

Dipesh Vinaychand Barbhaya

Age:- 48 years, Occupation:-Business,

Adult, Indian Inhabitant,

Residing at 502, Jeevan Anand Building,

M.G. Cross Road No.4, Patel Nagar,

Near Jeevan Sapna Tower,

Kandivali (West), Mumbai – 400 067

...Applicant

v/s.

The State of Maharashtra

At the instance of Sr. PI

Kandivali Police Station,

Kandivali (West), Mumbai – 400 067

...Respondent

Mr Sunny Waskar, a/w Ms Harshada Morey, Mr Shamish Marwadi and Ms Bhavika Patil, for the applicant.

Mr Yogesh Y Dabke, APP, for the respondent/ State.

API Viraj Jagadale, Kandivali Police Station, Mumbai.

Coram: R.N. Laddha, J.

Date: 4 October 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.638 of 2024, registered at Kandivali West Police Station, Mumbai, for offences punishable under Sections 420, 465, 468 and 471 of the Indian Penal Code.

2. According to the FIR, the informant engaged in business

of transactions with the applicant and several companies where the applicant held a directorial position. Despite numerous requests for repayment, the applicant did not settle the outstanding amount. Consequently, the informant filed a recovery suit in the Civil Court to reclaim the dues. The informant also alleges that, in retaliation to this recovery action, the applicant filed a complaint accusing the informant of forgery. In the present FIR, the informant reiterates that despite repeated demands, the applicant failed to make the required payment of the business transaction.

3. Mr Sunny Waskar, the learned Counsel appearing on behalf of the applicant, submits that the informant has failed to make payments for machinery and diamonds purchased from the applicant. Responding to this non-payment, the applicant raised concerns and filed a complaint. The present FIR, the learned Counsel argues, is a retaliatory measure and an after thought, lodged only as a counterblast to the FIR, previously filed by the applicant. Furthermore, Mr Waskar asserts that the matter is primarily of a civil nature, as evidenced by the fact that a commercial suit concerning the same transactions is pending before the civil Court. The learned Counsel also contends that the present FIR was filed unjustified and significantly delayed, suggesting ulterior motives on the part of

the informant. It is argued that the applicant has been falsely implicated in the alleged crime. The applicant is willing to comply with any conditions that this Court may impose.

4. Mr Yogesh Dabke, the learned APP representing respondent/State, submits that both the applicant and the informant have filed cross cases against each other, each alleging the other's involvement in the ongoing dispute. The learned APP submits that the applicant's custody is essential for comparing signatures on the key documents related to the case. However, the learned APP, submits that if this Court is inclined to grant the applicant pre-arrest bail, it may impose appropriate conditions and applicant's cooperation with the investigation.

5. Upon perusing the records, it appears that the applicant is accused of not repaying the amount for diamonds sold by the informant. This dispute arises from the sale transactions, with both parties filing cross cases against each other, and the informant also filing a commercial suit in the Civil Court. *Prima facie*, the material on record suggests that the core issue is civil, related to a financial dispute rather than a criminal offence. Moreover, there has been a significant delay in filing the present FIR, raising questions about the motives behind its timing. The alleged offence spans the period from March 2019 to November 2023. An FIR was lodged in April 2024,

and registered on 17 July 2024. Notably, on 15 May 2024, the investigating officer sent a letter to the applicant, indicating that both the applicant's and the informant's statements had been recorded and relevant documents collected. The letter suggested that both parties may agitate their grievances before the Civil Court. After this advise, no further enquiry or investigation has taken place. However, after about two months suddenly an offence was registered against the applicant. Furthermore, it appears from the record that the present FIR was lodged after the complaint made by the applicant. In these circumstances, this Court is inclined to exercise its discretion in favour of the applicant and grant relief subject to appropriate safeguard. Hence, the following order.

ORDER

- (i) In the event of the applicant's arrest in CR No.638 of 2024, registered at Kandivali West Police Station, Mumbai, he shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing two or more sureties in the like amount.
- (ii) The applicant shall attend the concerned Police Station as and when

required.

(iii) The applicant, himself or through any other person, shall not tamper with the evidence or influence the witnesses.

6. The application stands disposed of accordingly.

[R.N. Laddha, J.]