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

## Anticipatory Bail Application No.2400 of 2024

1. Chandrakant Haraklal Gandhi
   Age: 69 years, Occ.: Business,
2. Ashish Chandrakant Gandhi
   Age: 40 years, Occ.: Business,
3. Nilesh Vinodchandra Gandhi
   Age: 51 years, Occ.: Business,
4. Manish Chandrakant Gandhi
   Age: 42 years, Occ.: Business,

   All are adult Indian Inhabitant of
   Mumbai, residing at B-11/188,
   Rajawadi CHS Ltd., Rajawadi,
   Ghatkopar (East),
   Mumbai – 400 077. ...Applicants

v/s.

1. State of Maharashtra
   (Through Tilak Nagar Police Station)
2. Neelam Haresh Gandhi,
   Residing at B-11/188,
   Rajawadi CHS Ltd., Rajawadi,
   Ghatkopar (East),
   Mumbai – 400 077. ...Respondents

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**[ Corrected as per speaking to minutes order dated 21/10/2024]**

Mr Aabad Ponda, Senior Advocate, along with Mr Bhavesh Thakur, i/b. Prayag Joshi, for the applicants.
Mr Yogesh Dabke, APP, for respondent No.1/ State.
Mr Bhavesh Parmar, along with Ms Reshma Nair, Mr Vivek Akshali, Mr Rahul Gaikwad, Mr Aqueel Patel, Mr Aman Jhawar, Mr Hrushik Gole, Ms Nikita Abhyankar, Mr Rajesh Sahani and Ms Vaishnavi Mudras, i/b. Gravitas Legal, for respondent No.2.
Senior Police Inspector, Dattatray Patil, Tilak Nagar Police Station, Mumbai, is present.

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**Coram : R.N. Laddha, J.**
**Date : 11 October 2024**

**P.C.:**

By this application, the applicants seek anticipatory bail in connection with CR No.389 of 2024, registered at Tilaknagar Police Station, Mumbai, for offences punishable under Sections 406, 409, 420, 465, 467, 468 and 471, read with 34 of the Indian Penal Code.

2. Before delving into the prosecution's case, it is pertinent to note that the involved parties are relatives. The family lineage relevant to this dispute is outlined below: Haraklal Gandhi had four sons, namely, Vinodchandra, Suryakant, Chandrakant (applicant No.1/ accused No.2), and Haresh (accused No.1). Neelam (informant/ respondent No.2) is the

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wife of Haresh. Nilesh (applicant No.3/ accused No.4) is the son of Vinodchandra. Manish and Ashish (applicants No.4 and 2/ accused No.5 and 3) are the sons of Chandrakant. Vidhi and Megha are the daughters of Haresh and Neelam. Neel is the husband of Megha and son-in-law of Neelam and Haresh.

3. According to the prosecution, the applicants and other family members are engaged in various business ventures and hold key managerial positions in multiple entities. It is alleged that between January 2020 and April 2024, the applicants and the co-accused misappropriated the informant's streedhan under the guise of business purposes and, despite repeated requests, failed to return it. Additionally, they removed the informant from the partnership of M/s Chandrakant Gandhi & Associates without settling the accounts by forging her signature on the Deed of Retirement and Admission of Partners dated 10 December 2020. Furthermore, it is alleged that the accused obtained loans in the informant's name and diverted the funds to business entities where they held prominent managerial roles.

4. Mr Aabad Ponda, the learned Senior Counsel appearing on behalf of the applicants, disputing the allegations, contends that the informant and accused No.1 stay together with the

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applicants and other family members. In April 2024, the informant and accused No.1 jointly lodged police complaints against the applicants. However, on 21 May 2024 and 29 May 2024, accused No.1, also the informant's husband, proposed to resolve all disputes and withdrew these complaints. Despite agreeing to this settlement, the informant filed the present FIR to falsely implicate the applicants and demand an exorbitant settlement. Mr Ponda, the learned Senior Counsel, further argues that there are legitimate loan transactions between family members, as evidenced by the informant's income tax returns since 2014. These returns, signed by the informant, indicate her awareness and lack of prior grievance. The learned Senior Counsel contends that the informant has concealed the fact that accused No.1, her husband, held shares in certain entities and that she received salaries from these entities. The applicants have never misused any funds; instead, they have covered the informant's medical expenses, including her medical insurance premiums. He further submits that considering the financial transactions between the informant and accused No.1, a Memorandum of Understanding dated 27 November 2020 was executed between the four brothers. This agreement stipulated that family members would not be held liable for transactions between spouses. The learned Senior

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Counsel also draws the Court's attention to a letter dated 14 May 2024 from accused No.1 to respondent No.1, in which he admits his liability for the informant's streedhan and acknowledges the misuse of the letterhead of M/s Nileshkumar Vinodchandra & Co.

5. The learned Senior Counsel submits that M/s Chandrakant Gandhi & Associates was established in 1992 with applicant No.1, Bharti Gandhi, Dina Gandhi and the informant as partners. While applicant No.1 held a 10% share, Bharti Gandhi, Dina Gandhi and the informant held a 30% share each. Although the wives were officially listed as partners, their husbands managed the firm's operations. Later, on 10 December 2020, the firm underwent a significant restructuring. Bharti, Dina, and the informant retired from their partnership roles. In their place, Haresh (accused No.1) and applicants No.2 and 4 were admitted as new partners. Following this restructuring, Haresh, the informant's husband, acquired a 35% share in the firm. This change was formally documented in the Deed of Retirement and Admission of Partners. The learned Senior Counsel further contends that the informant voluntarily agreed to this new arrangement. This is supported by her income tax returns, which show a shift in her filing status. Prior

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to 2020, her returns were filed under ITR-3, which includes partnership income. After the restructuring, she filed her returns under ITR-2, indicating her status as an individual taxpayer and no longer a partner in the firm.

6. Furthermore, Mr Ponda asserts that the informant or her husband have consistently been the firm's beneficiaries until accused No.1 retired in 2023. From 2020 until the filing of the complaints in April 2024, which were subsequently withdrawn in May 2024, neither the informant nor accused No.1 raised any grievances. The informant reiterated similar concerns in August 2024 by filing the present FIR, which is an afterthought. Significantly, to date, the retiring partners and accused No.1 have not contested the 2020 Deed of Retirement and Admission. Mr Ponda, the learned Senior Counsel, emphasises that the informant has not pursued civil proceedings to settle the accounts and has instead utilised the police machinery to recover the alleged dues. He also points out that accused No.1 has not been arrested and is colluding with the informant. Additionally, to assist the investigation, the applicants searched their shared office premises and discovered that accused No.1, with the help of his family members, stole the Deed of Retirement and Admission from the applicants'

office. The applicants promptly lodged a complaint on 29 August 2024 with the Tilaknagar Police Station, Mumbai, against the informant, accused No.1, Megha and Neel. This complaint has been shared by the prosecution with the informant and accused No.1, who have addressed it in their respective pleadings.

7. Concluding his arguments, Mr Ponda relies upon the following decisions: ***(i) Pakala Narayana Swami v. Emperor*[1]*, (ii) Palvinder Kaur v. State of Punjab*[2]*, (iii) Balbir Singh v. State of Punjab*[3]*, and (iv) Bishwa Nath Aggarwal v. Meena Gupta*[4]*,*** to contend that a co-accused's confession cannot be used against another co-accused. Additionally, he cites ***R. Vasudevan v. CBI*[5]*,*** to argue that the investigating agency must not discriminate while dealing with the accused. Despite insisting on the applicants' custody, the agency allows accused No.1, the informant's husband, to remain free. The learned Senior Counsel also refers to ***Irfanullah Habibullah Faruqi v. State of Maharashtra*[6]*,*** suggesting that custodial interrogation is unnecessary if a photocopy of the document is provided and

1. (1939) 41 Bom LR 428.
2. AIR 1952 SC 354.
3. AIR 1957 SC 216.
4. 2000 AIR SCW 4959.
5. 2010 SCC OnLine Del 130.
6. 2020 SCC OnLine Bom 3794.

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the other side has no objection to using the photocopy in the trial as primary evidence. Lastly, the learned Senior Counsel asserts the applicants' innocence, emphasising their compliance with the notice under Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') and their cooperation with the investigation by providing the necessary documents available with them. The applicants' custody is unnecessary as there is nothing to be recovered or discovered, and they are willing to comply with any condition imposed by the Court, including providing handwriting and signature specimens to the investigating officer.

8. On the other hand, Mr Yogesh Dabke, the learned Additional Public Prosecutor representing respondent No.1/ State, opposing the request for anticipatory bail, contends that the offence is serious and that the applicants' custody is necessary solely to recover the original Deed of Retirement and Admissions of Partners. However, the learned APP acknowledges that the investigation is almost over except for the recovery of this document. He expresses concerns that granting pre-arrest bail to the applicants could lead to tampering with evidence or influencing witnesses.

9. Mr Bhavesh Parmar, the learned Counsel appearing on

behalf of respondent No.2/ the informant, opposes the request for pre-arrest bail. He argues that on 29 August 2024, the applicants sent a letter to the police, and in paragraph 4, they alleged that the informant, her husband (also an accused), her daughter, and her son-in-law stole various original documents, including a forged and fabricated Retirement Deed, from their residence and office between 19 August 2024 and 29 August 2024. This alleged theft occurred while the applicants were absent from 17 August 2024 to 28 August 2024, as mentioned in paragraph 3 of the letter. This letter was issued on 29 August 2024, a day after the interim protection was granted to the applicants. This timing suggests that the applicants may have been attempting to suppress or destroy key evidence, further undermining their entitlement to the requested relief. The learned Counsel submits that accused No.1 (the informant's husband) specifically stated before the police and the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') that various letters, emails, and recordings, including the letter dated 29 May 2024, were obtained from him under undue influence and coercion by the applicants. A review of the letters dated 2 May 2024 and 14 May 2024, addressed by the informant's husband, suggests that the applicants exercised undue influence. The informant's

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husband wrote two letters on 29 May 2024, both addressed to the applicants, yet the content of these letters is distinct. Mr Parmar, the learned Counsel, submits that the Memorandum of Understanding dated 27 November 2020, bearing the informant's husband's signature, also appears to be an afterthought, as it was neither registered nor notarised in accordance with the law, and it was improperly used for purposes other than those intended. According to the learned Counsel, these facts suggest that the applicants exerted undue influence and coercion on the co-accused, witnesses and the informant, preventing the true facts from being revealed during the police investigation. This, once again, disqualifies them from receiving the discretionary relief.

10. The learned Counsel further submits that the informant's husband also submitted letters to the police on 2 May 2024 and 14 May 2024, which, *prima facie,* appear to have been executed under the influence of the applicants to avoid the filing of an FIR based on the informant's written complaint. The applicants exerted undue influence on the police, delaying the recording of the informant's statement and the registration of the FIR, despite the informant's written complaint dated 29 April 2024, which outlined cognisable and non-bailable

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offences. The orders dated 16 May 2024 and 12 August 2024 by the Division Benches of this Court concerning the informant's FIR further highlight these concerns. The learned Counsel submits that the applicants also influenced the police investigation into the earlier FIR filed by the informant's son-in-law, preventing their arrest and secured anticipatory bail by an order dated 16 May 2024. The Division Bench's order dated 8 August 2024, related to the son-in-law's FIR, led to the police seeking the cancellation of the applicants' bail, which is now pending adjudication before the Sessions Court. The Sessions Court's order dated 22 August 2024, rejecting ABA No.1690 of 2024, provided reasons for this decision, and subsequent events, including the Court's order dated 28 August 2024, have proven that the applicants did indeed interfere with the investigation.

11. Mr Bhavesh Parmar, the learned Counsel, submits that the informant, a 60-year-old senior citizen requiring dialysis every alternate day and suffering from other medical ailments, has been subjected to mental harassment. In April 2024, the informant even attempted suicide and has been without a home since 12 April 2024, as the applicants and their family, who live in the same building, continue to harass her, as evidenced by

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the FIR and earlier complaints to the police, which are the subject of these proceedings. Exploiting the informant's condition, the applicants forged her signature on the Deed of Retirement and Admission of Partners. Additionally, in 2023, the informant's husband (accused No.1) was removed from the partnership, and the applicants pressured him to withdraw all complaints, which he confirmed in his statement.

12. Mr Parmar emphasises the seriousness of the offence and submits that the applicants' reluctance to provide the original Deed indicates a potential for tampering, thus necessitating their custody. According to the learned Counsel, the conduct of the applicants lacks honesty, thereby disqualifying them from receiving the requested discretionary reliefs. To bolster his submissions, the learned Counsel cites the decisions in ***(i) Sumitha Pradeep v. Arun Kumar C.K.***[7]***; (ii) Srikant Upadhyay v. State of Bihar***[8]***; and (iii) Uday Suresh Kotwal & Anr v. Tushar Sharad Apate***[9].

13. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the material placed on record, including the case diary, affidavit-in-reply of

7. (2022) 17 SCC 391.
8. 2024 SCC OnLine SC 282.
9. Anticipatory Bail Application No.2613 of 2024 dated 1 October 2024 (Bombay).

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respondent No.2, and written notes of arguments presented by the rival parties.

14. After reviewing the records, it appears that the applicants are primarily accused of embezzling the informant's streedhan, misappropriating funds obtained from loans by diverting them to various entities, and forging the informant's signature on the Deed of Retirement and Admission of Partners. This alleged forgery removed the informant from the partnership of M/s Chandrakant Gandhi & Associates. It is important to note that the parties involved are close relatives, and the partnership firm in question is an unregistered entity formed in 1992, with applicant No.1, Bharti, Dina and the informant as its partners. A cursory reading of the FIR reveals that the allegations against the applicants were raised after a significant delay and lacks specific details. The delay in lodging the FIR remains unexplained. In April 2002, the informant allegedly entrusted her streedhan to the partners of M/s Nileshkumar Vinodchandra & Co, which included accused No.1 (informant's husband), applicant No.1, Vinodchandra, and Suryakant. When the informant demanded the return of her streedhan, her requests were repeatedly refused. Despite this, the informant did not file any formal complaint about the

misappropriation of her streedhan until April 2024. Instead of addressing her grievance against the partners of M/s Nileshkumar Vinodchandra & Co, the informant chose to implicate applicants No.2 to 4, who were not involved in the alleged transaction. Furthermore, a joint reading of the Memorandum of Understanding dated 27 November 2020 and accused No.1's letter dated 14 May 2024 to the prosecution suggests that accused No.1 (the informant's husband) was responsible for returning the informant's streedhan. This adds another layer of complexity to the case, indicating that the primary liability for the return of the streedhan lies with accused No.1.

15. Further, the informant alleges that after reviewing her income tax returns, she discovered that the applicants had taken out loans in her name and redirected the funds to other entities. However, perusing these returns reveals that it was not the applicants but accused No.1, the informant's husband, who was a partner in some of the entities where the funds were transferred. From these entities, the informant received salaries. Despite raising concerns about a forged signature on the Retirement Deed dated 10 December 2020 in April 2024, the informant acted in accordance with the retirement deed as

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evidenced by the income tax returns she signed. The returns filed before December 2020 were under ITR-3, while those filed after her retirement were under ITR-2. Although the informant disputes the validity of the Retirement Deed, accused No.1, her husband, who derived benefit from it, has not taken any steps to contest the arrangement. Additionally, the informant alleges that the applicants coerced her and her husband into settling all disputes and handling correspondence. In the present case, the informant has named her husband as accused No.1, accusing him of these actions, and relies on his statement recorded under Section 164 of CrPC. To date, accused No.1 has not been arrested, which suggests a potential bias in the prosecution's handling of the applicants. A profitable reference in this regard can be made to ***R. Vasudevan (supra)***.

16. The Sessions Court denied the applicants' request for pre-arrest bail, emphasising the necessity of custodial interrogation to recover the original Deed of Retirement and Admission of Partners. The applicants had previously reported the theft of this document from their shared office by the informant's family members. The learned APP, following instructions from the investigating officer present in the Court, acknowledges that aside from collecting CCTV footage, no investigation had

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been conducted regarding the applicants' complaint. *Prima facie*, the dispute appears to be civil and dependent on documentary evidence. The applicant No.3 has complied with the Section 35 BNSS notice, attended the concerned police station, and cooperated with the investigation. The investigation has nearly concluded, with the original Deed being the only item remaining to be recovered. Notably, a photocopy of this Deed is already with the investigating agency, and the applicants have no objection to using this photocopy as primary evidence in the trial. This situation can be referenced in the decision of this Court in ***Irfanullah Habibullah Faruqi (supra)***.

17. The Hon'ble Supreme Court in ***Ashok Kumar Vs State of Union Territory Chandigarh***[10] 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*

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

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> *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."*

18. In the totality of the circumstances, this Court is inclined to exercise its discretion in favour of the applicants. The prosecution's apprehension about evidence tampering and witness influence can be addressed by imposing appropriate conditions. Hence, the following order:

**ORDER**

(i) In the event that the applicants are arrested in connection with CR No.389 of 2024, registered at Tilaknagar Police Station, Mumbai, they shall be released on bail upon executing a PR Bond of Rs.25,000/- each and furnishing one or more sureties in the like amount.

(ii) The applicants shall attend the concerned Police Station as and when required and cooperate with the investigation, including providing their handwritten and signature specimen.

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

19. The application stands disposed of accordingly.

20. It is clarrified that the observations made hereinabove are confined for the purpose of determining the applicants' entitlement to pre-arrest bail only.

**(R.N. Laddha, J.)**

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