



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2619 OF 2024**

Asif Mansur Shaikh	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Rajendra Rathod with Mr. Abdullah Maknojia, Mr. Nadeem Malik, Mr. Zeeshan Sardar, for Applicant.

Mr. A.A.Naik, APP for State.

Mr. M.K.Kocharekar, for Intervener.

Mr. Atul Adurkar, PI Shantinagar Police Station, Bhiwandi present.

CORAM: N.J.JAMADAR, J.

DATE : 8 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.50 of 2023 registered with Shanti Nagar Police Station, Bhiwandi, for the offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.
3. The gravamen of indictment against the applicant and co-accused is that a seven storied building was erected while there was permission to erect only three storied structure and flats therein were sold to the first informant and others by making a false representation that the building was authorized. In the process, the applicant and the co-accused had forged the documents evidencing the sanction of the building plan by the Municipal Corporation.

4. The applicant had initially preferred ABA No.599 of 2023. By an order dated 20 July 2023, interim protection was granted as a submission was made on behalf of the applicant that the applicant had approached the Municipal Corporation for regularization of the structure. On 26 October 2023, however, a statement was made before the Court that the applicant did not wish to press for the said application. Accordingly, the application came to be dismissed as not pressed, and the interim protection granted earlier stood vacated.

5. Apprehending arrest, the applicant again approached the Court of Session. By an order dated 5 September 2024, the said application came to be rejected. The applicant has again approached this Court.

6. First and foremost, once the application for pre-arrest bail came to be dismissed as withdrawn, despite interim protection having been granted, and thus the interim order stood vacated, there is no propriety in entertaining the application for pre-arrest bail afresh. The applicant took the risk of withdrawing the application for pre-arrest bail.

7. Learned Counsel for the Applicant submitted that, after the interim protection was granted, the applicant resorted to a sharp practice. The applicant was shown to be formally arrested on 17 August 2023. Subsequently, the applicant withdrew the application. The said practice has been deprecated by the Supreme Court in the case of **Rukmani Mahato V/s.**

State of Jharkhand¹.

8. The aforesaid submission of Mr. Kocharekar deserves consideration. Interim protection was granted by this Court by an order dated 20 July 2023. Arrest form indicates that the applicant was arrested on 17 August 2023. On 26 October 2023, ABA No.599 of 2023, in which there was an order of interim protection, was not pressed by the applicant.

9. In the event of grant of interim protection, conceivably, two situations emerge. First, the arrest and release of the applicant on bail by the police in pursuance of the interim order dated 20 July 2023. In that case, the order of pre-arrest bail would stand implemented and the purpose of the pre-arrest bail fructified. If that was the case, the applicant cannot be again arrested as he came to be arrested and released on bail pursuant to the order of interim pre-arrest bail passed by this Court.

10. Second, the applicant might have appeared before the trial Court and sought regular bail. As the application for pre-arrest bail was pending before the Court and the interim protection was granted by this Court, the applicant could not have been enlarged on regular bail.

11. In the case of **Rukmini Mahato (supra)**, the Supreme Court deprecated the practice of appearing before the Court and seeking regular bail, while the accused is protected by an order of interim pre-arrest bail. The

1 (2017) 15 SCC 574

Supreme Court, inter alia, observed as under :

“9. When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned trial court and seek regular bail. The predicament of the subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior Court meaningless.

10. If this is a practice that is prevailing in some of the subordinate Courts in the Country and we have had notice of several such cases, time has come to put the learned subordinate Courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged. We, therefore, direct that a copy of this order be forwarded to the Director of all Judicial Academies in the country to be brought to the notice of all judicial officers exercising criminal jurisdiction in their respective States.”

12. The Supreme Court has, in terms, observed that the practice of consideration of regular bail applications upon surrender during the pendency of an application for pre-arrest bail before a superior court must be

discontinued.

13. The aforesaid being the position in law, I do not find any justifiable reason to entertain the instant application for pre-arrest bail afresh. Consequences will follow depending upon the circumstances in which the applicant came to be arrested and released, as indicated above.

14. With the aforesaid clarification, the application stands disposed.

(N.J.JAMADAR, J.)