

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2903 OF 2024

Sanjay Bipin Paymaster	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Shirish Gupte, senior counsel a/w Mr. Sushant Arora, Ms. Vaishnavi Adhav i/b LR & Associates for Applicant

Mr. Tanveer Khan, APP for Respondent-State in ABA No.1773/24

Mr. Siddharth Jagushte for intervenor/first informant.

CORAM : MANISH PITALE, J.

DATE : NOVEMBER 18, 2024

P.C. :

1. Heard Mr. Gupte, learned senior counsel appearing for the applicant, Mr. Khan, learned APP for State and Mr. Jagushte, learned counsel having instructions to appear on behalf of the first informant.

2. The applicant apprehends arrest in connection with FIR No.1514 of 2024 dated 27.09.2024 registered at Hadapsar Police Station, District-Pune, for offences under Sections 329(4), 189(2), 190, 191(2), 324(4) and 324(5) of the Bharatiya Nnaya Sanhita, 2023 (BNS).

3. Although the said offences are bailable, the applicant is apprehending arrest as he is informed that there is likelihood of offence under Section 321 (1) pertaining to lurking house trespass or house breaking, being added in the present case. The said offence is classified as a cognizable and non-bailable offence.

4. The learned senior counsel appearing for the applicant at the outset, submitted that the applicant has directly approached this Court, without filing any application for Anticipatory Bail before the Sessions Court. It is submitted that there are exceptional circumstances

warranting such an approach adopted by the applicant. He invites attention of this Court to the documents filed with the application to emphasize that the applicant was constrained to open the premises and enter the same, which were given on leave and license to the first informant. It is submitted that since the first informant was not occupying the premises and he also failed to pay the leave and license fees as per the leave and license agreement, the applicant was constrained to approach the competent Civil Court wherein, on 03.02.2022, an interim order was passed in favour of the applicant directing the first informant to deposit arrears of license fee. It is claimed that the arrears of license fee have not been deposited till date. In the backdrop of complaints being made by occupiers of premises located beneath the premises in question regarding seepage, etc., the applicant was constrained to enter the premises only for the purpose of carrying out necessary repairs. It is further brought to the notice of this Court that the term of leave and license agreement has already expired on 31.08.2024.

5. It is further submitted that presently the applicant is abroad and he is likely to visit India in the last week of November. As he apprehends arrest, the applicant has moved this Court directly. It was emphasized that a pure civil dispute was being given the colour of criminality.

6. The learned APP is not able to make a specific statement about the likelihood of offence under Section 331(1) of the BNS being added, as the investigating officer could not remain present in Court today.

7. The learned counsel appearing on behalf of the first informant challenges the maintainability of the application by relying upon judgment of this Court in the case of *Mohanlal Vs. State of Maharashtra* **2007(4) Mh.L.J. 9** wherein it is laid down that unless there are exceptional circumstances, the High Court ordinarily should not entertain such an application for Anticipatory Bail, unless the applicant

has first approached the competent sessions Court.

8. It is submitted that on this ground alone the application ought to be dismissed.

9. This Court has considered the rival submissions in the light of material placed on record as also the judgment on which the learned counsel appearing for the first informant has placed reliance.

10. A perusal of the aforesaid judgment in the case of **Mohanlal Vs. State of Maharashtra** (*supra*) shows that it is indeed held that unless there are exceptional circumstances, the High Court ought not to ordinarily entertain an application for Anticipatory Bail, unless the applicant has first approached the Sessions Court. In the facts of the said case, the High Court found exceptional circumstances to entertain the anticipatory bail application and allowed the same. In that light, this Court has considered the documents on record and the facts that emerge therefrom. The order dated 03.02.2022 passed by the competent Civil Court in the Civil Suit filed by the applicant against the first informant, shows that upon a *prima facie* case being made out, the said competent Court held in favour of the applicant and directed the first informant to deposit arrears of license fee for occupying the premises in question. It is specifically stated in the application that although the first informant did initially partly comply with the said order but later he failed to do so and as of date, the arrears of license fee mounted to a huge amount of about Rs.89 Lakhs. Considering the tenor of the submissions made on behalf of the first informant that office work was being carried out from home, a strong *prima facie* case is made out that the first informant is not occupying the premises in question.

11. It is specifically stated on behalf of the applicant that the occupiers of the premises located beneath the subject premises have complained about seepage from the said premises and it is for this reason that the applicant was constrained to enter the said premises. In

this backdrop, the applicant claims to have entered the premises, only with a view to find a solution for the grievances raised by the occupiers of the premises located below. It is to be noted that while the incident in question is said to have taken place on 02.09.2024, the FIR was registered after 25 days on 27.09.2024.

12. The documents on record also show that the period of leave and license agreement itself expired on 31.08.2024, two days prior to the alleged incident of 02.09.2024. The applicant is presently abroad and he desires to visit India to find a solution to the aforesaid controversy and to undertake appropriate steps to satisfy the grievances of the occupiers of the other premises in the said building.

13. In such a situation, even if the law laid down by this Court in the case of **Mohanlal Vs. State of Maharashtra** (*supra*) is to be taken for consideration, it can be said that the exceptional circumstances are made out by the applicant for entertaining the present application. Therefore, this Court rejects the preliminary objection raised on behalf of the first informant.

14. Having held so, on merits, this Court is convinced that a strong *prima facie* case is made out in favour of the applicant. In the first place, the FIR appears to be delayed by at least 25 days. The tenor of the submissions made on behalf of the first informant indicates that the premises are presently not even physically occupied by the first informant. There is enough material to show that the said circumstances have led to a situation of creating nuisance for the occupiers of the other premises in the building, where the subject premises are located. The applicant has made out a strong *prima facie* case in his favour to claim that he was constrained to enter the premises only with a view to address the grievances raised by the occupiers of the other premises in the said building. There is enough material to show that the competent Civil Court has already passed an interim order in favour of the applicant and

against the first informant. The arrears of license fee are stated to be to the tune of Rs.89 Lakhs. In such a situation, so long as the applicant is ready to cooperate with investigation upon visiting India, a strong case is made out to allow the present application.

9. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with FIR No. 1514 of 2024 dated 27.09.2024 registered at Hadapsar Police Station, District- Pune, he shall be released on bail on furnishing PR Bond of Rs.25,000/- [Rupees Twenty Five Thousand only] and one or two sureties in the like amount;
- B. The applicant shall remain present before the investigating officer on 02.12.2024 and thereafter, as and when called by the investigating officer. He shall co-operate with the investigation;
- C. The applicant shall not influence the informant, witness or any person concerned with the case and he shall not tamper with the evidence.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The application is disposed of.

(MANISH PITALE, J.)