IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2928 OF 2024

Aniket Shrinivas Mundada ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Ramesh Dube Patil, i/b. Jay & Co. for applicant.

Mr. Mayur S. Sonawane, APP for respondent-State.

Mr. Kiran Gangurde, PSI, Pimpalgaon Police Station, District Nashik Rural

CORAM : MANISH PITALE, J.
DATE : 11th NOVEMBER, 2024

P.C. :

. The applicant is constrained to move this anticipatory bail application in peculiar circumstances. The applicant has been arraigned as an accused in FIR No.0029 of 2024 dated 14.02.2024, registered at Pimpalgaon Police Station, District Nashik Rural, for offences under Sections 471, 469, 468, 467, 465 and 420 read with Section 34 of the Indian Penal Code, 1860.

2. By order dated 15.04.2024, the Court of Additional Sessions Judge, Niphad, granted anticipatory bail to the applicant on merits, after reaching findings in favour of the applicant as regards *prima facie* case.

3. It is the case of the applicant that he abided by all the conditions imposed by the aforesaid Court, while granting him anticipatory bail, including appearing before the investigating officer on specific dates, except on four dates due to health reasons. It is submitted that even after the four

dates on which the applicant had remained absent, he did remain present before the investigating officer on 18.07.2024 and continued to do so on various dates till 12.09.2024. Yet, the application for cancellation of bail was moved, not only on the ground of the applicant having remained absent before the investigating officer in violation of the condition imposed by the said Court, but also on the ground that fresh material had been received during the course of investigation, particularly a report regarding the genuineness of a demand draft.

4. The learned counsel for the applicant submitted that there are contradictory observations in the order of the aforesaid Court dated 30.09.2024, whereby the application for cancellation of anticipatory bail was allowed and the anticipatory bail was cancelled. It was further submitted that the applicant continues to have a strong case on merits and his absence on four dates is sufficiently explained by the documents placed alongwith the application.

5. On the other hand, the learned APP submitted that the report as regards the demand draft was now available, which shows that the demand draft submitted by the applicant for encashing, was found to be not genuine. This material accompanied with the absence of the applicant before the investigating officer amounting to violation of specific condition, indicated sufficient grounds to justify the order dated 30.09.2024 passed by the aforesaid Court cancelling the anticipatory bail of the applicant.

6. This Court has considered the material on record. The informant in the present case is an officer of the bank, wherein the applicant deposited the subject demand draft of ₹ 3.5 crores, which was encashed. It is alleged that

after the said demand draft was encashed, the party which had issued the demand draft in favour of the company of the applicant, produced a demand draft bearing the same number before the issuing branch at Bangalore and sought cancellation of the demand draft. This created confusion in the minds of the bank officers and this eventually led to registration of FIR against the accused persons, including the applicant, on the allegation that a fabricated demand draft was used by the accused persons to commit fraud on the bank and to illegally enjoy the benefit of ₹ 3.5 crores.

7. The aforesaid Court, while granting anticipatory bail to the applicant, made the following observations:

> "12. Demand draft is a negotiable instrument. The bank issues demand draft only when there is a balance in the account of the person who wants to issue demand draft. In the present case also admittedly, demand draft No. 3691 is issued from the account of Sendur Industrial Corporation. A demand draft issued by a person cannot be cancelled if the same is encashed. In the present it is not the case of informant that either Axis Bank Pimpalgaon branch or Axis Bank, Nagadevenhalli branch Bengluru has repaid amount of demand i.e. Rs.3,50,00,000/- Shri. Sumantha. Therefore, there is no cheating of the bank of the informant, at this moment. It is strange that Shri. Sumantha is not coming forward. He has not filed any complaint in any police station for cheating. There is every possibility that the demand draft which is produced by Shri. Sumantha in the Axis Bank of Nagadevenhalli branch, Bengluru is a forged demand draft. I have already observed that the Investigating Officer has not even seized the said demand draft. Shri. Sumantha may be an accused in the crime, if the said demand is forged. Considering all the facts and circumstances on record and particularly considering the statement of the informant in the FIR that after verification, the informant found that the demand draft which is received in his branch is the original one. I have no

> hesitation to hold that there is no strong prima facie case made out against present applicant/accused."

8. Even if the report allegedly subsequently received, stating that the demand draft deposited with the branch of the bank at Pimpalgaon, was found not to be genuine, is to be accepted, it cannot be ignored that according to the applicant, the said demand draft was received from the party at Bangalore to whom the applicant's company had supplied goods, including onions, etc. In such a situation, as observed in the above-quoted paragraph of the order granting anticipatory bail to the applicant, the role of the said party assumes significance and the investigating officer is expected to investigate on those lines also. If it is a genuine case, where the demand draft received from the other party is simply deposited by the applicant with the branch of the bank at Pimpalgaon, then to claim that the report has subsequently brought on record new material, cannot be justified. To that extent, this Court is in agreement with the applicant.

9. This leaves only the aspect of absence of the applicant before the investigating officer on four dates, amounting to violation of specific condition imposed by the aforesaid Court in the order dated 15.04.2024, while granting anticipatory bail to the applicant. The documents on record show that although the applicant may have remained absent on four specific dates, thereafter from 18.07.2024, the applicant abided by the condition and did remain present before the investigating officer on various dates, at least upto 12.09.2024.

10. As regards absence on four specific dates, this Court does find that the applicant has placed on record photocopies of medical documents to show his health condition, due to which he could not remain present before the

investigating officer. In such a situation, this Court is of the opinion that the order dated 30.09.2024 cancelling anticipatory bail to the applicant, is not justified.

11. Accordingly, the order dated 30.09.2024 is set aside and the present application is allowed, thereby granting anticipatory bail to the applicant on the very same conditions imposed by the aforesaid Court in its order dated 15.04.2024.

12. In order to address the apprehension expressed by the learned APP, the applicant shall remain present before the investigating officer on 14.11.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the investigating officer.

13. The application stands disposed of.

(MANISH PITALE, J)

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2024.11.11 18:37:56 +0530 *Priya Kambli*