IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.3010 of 2024

1. Sabir Ibrahim Khan
Age 51 years, Indian Inhabitant,
28/1, L.I.G. Colony,
Vinoba Bhave Nagar,
Pipe Road, Kurla West,
Mumbai – 400 070.

2. Mobin Siddique
Age 44 years, Indian Inhabitant,
Hafizuddin, H. No.2,
Shah Nagar Colony, Satrik Road,
Near Pappu Hotel, Lucknow
Uttar Pradesh. … Applicants

Versus

The State of Maharashtra
(At the instance of
Dharavi Police Station) … Respondent

Mr Asirul Shaikh, for the applicants.
Mr Arfan Sait, APP, for the respondent/ State.
Mr Harekrishna Mishra, for the intervenor/ informant.
API Vikas Patil, Dharavi Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 2 December 2024.

P.C.:

The applicants have filed this successive anticipatory bail application, apprehending arrest in connection with CR No.453 of 2023, registered at Dharavi Police Station, Mumbai, for offences punishable under Sections 406, 420 and 506(2) read with 34 of the Indian Penal Code.

2. The gravamen of the indictment is as follows: the applicants, along with co-accused Vinod Rao, partners of M/s Crystal Star Infra, are engaged in the real estate business. In June 2020, Sabir, with the intent to deceive the informant, offered an opportunity to double his investment within six months through the purchase and sale of a parcel of land in the Lucknow-Gorakhpur region. He convinced the informant to transfer a total of Rs.1,03,50,000/- to himself, co-accused Vinod Rao, and their firm between August and September 2020, of which Rs.65,00,000/- was paid in cash and recorded under an agreement. Despite repeated requests from the informant for the promised returns, the accused failed to deliver the agreed double amount. Instead, they repaid only Rs.13,99,000/- towards the principal between September 2022 and February 2023. The informant then demanded the remaining amount of Rs.89,51,000/-. In April 2023, during a visit to the accused in Lucknow, they refused to pay the balance

and threatened to harm the informant's family if he persisted in his demands, which ultimately led to the filing of the present First Information Report (FIR).

3. Mr Asirul Shaikh, the learned Counsel appearing on behalf of the applicants, disputing the allegations, contends that the applicants have already repaid the alleged funds, including a payment of Rs.20,00,000/- to Zahir Ahmed as directed by the informant, and claims that no further recovery is due from the applicants. According to the learned Counsel, the agreement documenting the purported exchange of Rs.65,00,000/- in cash is false and fabricated. Further, the learned Counsel submits that the primary purpose of filing this second bail application is to demonstrate the applicants' *bona fides* by offering to deposit Rs.12,00,000/-, subject to the investigating authority de-freezing the firm's account. Mr Shaikh also asserts that the applicants have been falsely implicated in this case and are willing to cooperate with the investigation.

4. Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/ State, and Mr Harekrishna Mishra, the learned Counsel appearing for the intervenor/ informant, in unison, submit that the applicants lured the informant into investing funds in their fraudulent scheme by

presenting overly optimistic investment proposal. The applicants and the co-accused accepted a portion of the invested funds through banking channels and cash transactions, the latter being conducted in the presence of witnesses and documented in an agreement. They further submit that the present application is untenable as it does not raise any new grounds to justify the request for pre-arrest bail. Drawing the attention of this Court to the pleadings and orders in Anticipatory Bail Application Nos.2023 of 2023 and 2025 of 2023, they jointly contend that the applicants had previously assured this Court of making deposits to demonstrate their purported good faith but failed to fulfil those commitments. The present proposal to deposit Rs.12,00,000/-, contingent upon the de-freezing of the applicants' firm's account, is nothing but a *mala fide* attempt to abuse the judicial process and evade arrest. Furthermore, the learned APP, emphasising the seriousness of the offence, submits that the investigation is in progress, and the applicants' custody is necessary to ascertain the details of the fraud. If the applicants are granted pre-arrest bail, they may tamper with the evidence or influence the witnesses.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar.

6. It is a well-established legal principle that filing a successive application for anticipatory bail is not prohibited. However, for such an application to succeed, the accused must demonstrate that there has been a significant change in circumstances. A mere superficial justification for the change would not suffice to warrant the approval of a second application for pre-arrest bail. Further, the request can be denied summarily if the grounds presented in the previous application are reiterated in the subsequent anticipatory bail application. A profitable reference in this regard can be made to ***GR Ananda Babu Vs State of Tamil Nadu and Anr*[1]*, Rani Dudeja Vs State of Haryana*[2]*, Bhisham Singh Vs State of Haryana*[3]*, and Imratlal Vishwakarma and Ors Vs State of MP* [4]*.***

7. It is also a settled position in law that granting pre-arrest bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. Considering each case's specific circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail. There is no one-size-fits-all approach. Caution is necessary, as

1 (2021) 16 SCC 725.
2 (2017) 13 SCC 555.
3 2024 (3) Criminal CC 490.
4 1997 (1) Crimes 289.

granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. These aspects are highlighted in ***Srikant Upadhyay Vs State of Bihar***[5].

8. The crux of the allegations against the applicants is that they intentionally misled the informant into investing a substantial amount by promising lucrative returns but failed to honour their commitment. From a cursory reading of the records, it appears that the informant invested with the applicants based on assurances of high returns, purportedly to be generated from the profits of selling land in Uttar Pradesh. However, the material placed on record does not indicate whether the applicants purchased the land as promised or generated any profits from its sale. Furthermore, while the applicants claim to have repaid the substantial amount to the informant, they dispute the legitimacy of an agreement documenting the cash transaction. In this context, the material on record does not reveal whether the applicants pursued any legal remedies to address this dispute. An analysis of the bank statements indicates that the applicants benefited from the invested funds. *Prima facie,* sufficient material is on record to suggest the applicants' involvement in the alleged crime.

[5] 2024 SCC OnLine SC 282.

9. The applicants previously approached this Court with an identical request for pre-arrest bail vide Anticipatory Bail Application Nos.2023 of 2023 and 2025 of 2023. During the hearing on 11 June 2024, the applicants, through their pleader, stated that they would deposit Rs.23,75,000/- within two weeks to demonstrate their *bona fides*. Based on this representation, the matters were adjourned to 25 June 2024, and the interim protection granted on 3 August 2023 was extended. In the meantime, the applicants opted to change their pleader and, on 21 June 2024, filed an interim application bearing No.2405 of 2024, seeking to recall the order dated 11 June 2024. When the matters were heard on 25 June 2024, the learned Counsel representing the applicants, submitted that his clients, the applicants, had not instructed their erstwhile pleader to make such a statement and sought to recall the order dated 11 June 2024. The matters were adjourned upon the learned Counsel's request for additional time to obtain proper instructions. The applicants later filed affidavits assuring to deposit the amount to demonstrate their *bona fides* and continued to enjoy interim protection. However, their repeated shifts in stance reflect an abuse of the judicial process. Eventually, on 17 October 2024, the applicants withdrew their applications and did not deposit the amount. In the present application, the applicants have

renewed their request for pre-arrest bail, claiming they are ready to deposit Rs.12,00,000/- if the investigating authority de-freezes their firm's account, citing this as a change in circumstances. However, this ground was already raised in the previous applications, thoroughly considered, and subsequently withdrawn by the applicants. Beyond this, the record does not indicate any substantial change in circumstances that would justify this Court's indulgence in granting pre-arrest bail. In cases of this nature, custodial interrogation becomes essential to unearth the fraud in all its facets and find the money trail. The investigation is in progress, and the possibility of there being similarly circumstanced victims is also eminent. Release of the applicants on pre-arrest bail would jeopardise the course of effective investigation.

10. Given the foregoing, this Court is not inclined to exercise its discretion in favour of the applicants. As a result, the application stands rejected.

(R.N. Laddha, J.)