IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.3075 of 2024

Ashlesha Bala Krishnan
Age:41, Occ: Housewife/ Business
R/at: Flat No.A1/13/14,
Mandovi Apts. CHS, Road No.1,
Opp. Molar Bhavan, Chedda Nagar,
Chembur, Mumbai - 89 … Applicant

versus

The State of Maharashtra
At the instance of Chembur
Police Station, Mumbai … Respondent

With
Interim Application No.5114 of 2024
In
Anticipatory Bail Application No.3075 of 2024

Saroja Rajan
Age 91, Flat No.601,
6th Floor, Heritage Pride,
11th Road, Chembur,
Mumbai – 400 071 … Intervenor/
Org Complainant

In the matter between:

Ashlesha Bala Krishnan
Age:41 Years, Occ: Housewife/ Business,
Flat No.A1-13/14, Mandovi Apts
CHS, Road No.1, Opp. Molar Bhavan,

Chedda Nagar, Chembur,
Mumbai 400089. … Applicant

Versus

State of Maharashtra
At the instance of Chembur
Police Station, Mumbai. … Respondent

Mr Aabad Ponda, Senior Advocate, *along with* Mr Ranjeet Sangle, Mr Vikrant Singh, Ms Ekta Tyagi, Mr Pratik Thakkar, Ms Anjali Shah, Mr Saurabh Arora, Mr Parag Sutar, and Mr Jai Gaikwad, i/by RVS Law, for the applicant.

Mr Hiten Venegavkar, PP, *along with* Dr Ashvini Takalkar, APP, and Ms Supriya Kak, APP, for the respondent/ State.

Mr Sanjog Parab, Senior Advocate, *along with* Mr Robin Jaisinghania, Mr Manvendra Kane, Mr Kedar Patil, Mr Jitesh Mundhwa, Ms Amruta Thakur, Mr Sangram Parab, Ms Divya Raut, Mr Mohan Rao, Ms Sulbha Rane, Mr Pratik Tare, and Ms Sakshi Baadkar, i/by Sakshi Kadam, for the intervenor/ the informant.

PI Sanjay Nale, Chembur Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 18 December 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.498 of 2023, registered at Chembur Police Station, Mumbai, for the offences punishable under

Sections 406, 420, 467, and 468, read with 34 of the Indian Penal Code.

2. The prosecution alleges that the applicant and the co-accused, under the guise of financial planning, exploited the informant's advanced age to persuade her to sign various documents. Consequently, they opened a new DEMAT Account with Axis Securities Limited. Despite assuring the informant that she would be the sole holder of this DEMAT account, they deceitfully included the co-accused, the applicant's husband, as a joint holder and the applicant as a nominee. Once the new DEMAT account was active, they transferred shares of substantial value from the informant's late husband's HDFC DEMAT account to the Axis DEMAT account. The informant was unaware of the activities in the account as the accused changed the contact details in the Axis Bank savings account to those of the co-accused to avoid detection of unauthorised transfers. The informant repeatedly asked for updates on her finances, but the accused gave evasive replies. When the informant's daughter and son-in-law made inquiries, they found that the co-accused had unauthorisedly closed a fixed deposit valued at Rs.2,00,00,000/- in the informant's late husband's HDFC account and transferred the proceeds to an Indian Bank account jointly held by the applicant and the co-accused. The

co-accused also unauthorisedly sold the shares. The proceeds from the shares, dividends, and accrued interest, totalling Rs.8,01,31,000/-, were diverted from the informant's Axis Bank savings account to the accused's Allahabad Bank, Indian Bank, and Axis Bank accounts. These actions led to the filing of the present crime.

3. Mr Aabad Ponda, the learned Senior Counsel appearing on behalf of the applicant, disputing the allegations, contends that the informant was fully aware of the documentation related to her accounts. The applicant acted as a nominee and a witness to the informant's will in accordance with the informant's instructions. Being named as a nominee does not indicate the applicant's involvement in any alleged offence. The learned Senior Counsel further contends that the funds credited to the applicant's account were part of her legitimate income, derived from rent, investments, dividends, and interest. Although it is pleaded in this application that the applicant was made a joint account holder in the Indian Bank account with the co-accused for the limited purpose of borrowing a loan from the Bank, the documents on record do not substantiate it. On the contrary, the documents and the affidavit filed by the Bank officials before the Division Bench of this Court, clarify that the applicant was not a joint account holder.

4. Further, Mr Ponda emphasises that the applicant has cooperated with the investigation by attending the concerned Police Station; however, she was arraigned as an accused only after the charge sheet was filed against her husband. According to the learned Senior Counsel, the alleged dispute is of a civil nature but has been given a criminal colour with the sole intention of extorting money from the applicant. Asserting the applicant's innocence, the learned Senior Counsel submits that the applicant is not a beneficiary of the alleged funds and has been falsely implicated in the crime. Earlier also, the informant made similar allegations against two individuals, Vasuki and Rekha, who used to assist the informant. Mr Ponda further submits that the applicant has cooperated with the investigation and complied with the Section 41A notice issued on 4 January 2024. The investigation has concluded, and nothing remains to be recovered or discovered from the applicant. Furthermore, the learned Senior Counsel submits that, without any application of mind, the learned Magistrate, at the respondent's behest, directly issued a non-bailable warrant against the applicant, which is under challenge before this Court. There is no embargo on considering an anticipatory bail application even if a declaration under Section 82 of the Code of Criminal Procedure, 1973, has been issued.

5. On the other hand, Mr Hiten Venegavkar, the learned Public Prosecutor representing the respondent/ State, opposing the request for pre-arrest bail, contends that the offence is serious as the accused took advantage of the informant's age and misappropriated Rs.10,01,31,000/- by dishonestly persuading her to sign documents. The applicant and the co-accused sold the shares in the Axis DEMAT account without the informant's consent. The sale proceeds received in the informant's bank account were rerouted to the applicant's account from the co-accused's accounts. The applicant is the beneficiary of the funds, and the applicant and the co-accused did these transactions and related actions within a period of one month from the transfer of shares from the informant's late husband's HDFC DEMAT account to the Axis DEMAT account.

6. Further, Mr Venegavkar, drawing the attention of this Court to the statements of the Indian Bank's officials, submits that the bank officials have provided contradictory statements and hidden the truth from this Court. The bank account in question was shown as a joint bank account for a considerable period. However, on 31 August 2024, the applicant wrote to the bank officials; though they initially informed that the applicant was a joint account holder, they later communicated

that the applicant was not a joint account holder. An investigation to that effect is required to be conducted.

7. The learned Public Prosecutor further submits that after receiving the Section 41A notice, the applicant has attended the concerned Police Station only once, did not cooperate with the investigation, and thereafter, absconded. A non-bailable warrant and a look-out circular have been issued against the applicant. In these circumstances, the applicant's custody is deemed necessary to ascertain the individuals involved in the crime and find the money trail.

8. Mr Sanjog Parab, the learned Senior Counsel appearing on behalf of the intervenor/ the informant, resisting the applicant's request for anticipatory bail, contends that the applicant and the co-accused knew the informant for many years. Taking undue advantage of the informant's advanced age, they orchestrated a conspiracy to siphon the informant's funds by initially offering minor assistance. Once the informant began trusting them, they lured her to sign documents and transfer shares from her deceased husband's DEMAT account under the pretext of financial planning. They assured her that she would be the sole holder of the new DEMAT account but dishonestly included the co-accused as a joint holder and the applicant as a

nominee. They also prepared a false affidavit stating that any third party, including the informant's daughter, must not question the transfers. The accused also changed all contact details to those of the co-accused, ensuring the informant remained unaware of these unauthorised transfers. Later, without obtaining the informant's consent, they sold the shares, closed a fixed deposit, and diverted the proceeds and other funds to their accounts.

9. Further, Mr Parab submits that the applicant is a beneficiary of the funds and is absconding. A non-bailable warrant has been issued against the applicant. The applicant has challenged this warrant before this Court in Criminal Application No.1551 of 2024; however, to date, the warrant has not been cancelled.

10. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

11. It is a settled position in law that granting anticipatory bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. The Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail, taking into account the specific circumstances of each case.

There is no straitjacket formula. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. Moreover, an accused individual cannot invoke this extraordinary power when an arrest warrant or proclamation has been issued, except in extreme and exceptional situations. However, persistent defiance of orders and continued absconding would disqualify a person from receiving such relief. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in ***Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282***.

12. Further, the principles to be considered for granting anticipatory bail are settled. The Court, *firstly*, must consider the *prima facie* case against the accused; *secondly*, the nature of the offence; and *thirdly*, the severity of its punishment. While bail can be denied on the requirement of custodial interrogation, its non-requirement cannot by itself be the sole ground to grant pre-arrest bail. These aspects are highlighted in ***Sumitha Pradeep Vs Arun Kumar C.K., 2022 SCC OnLine SC 1529***.

13. The allegations against the applicant are that she, in connivance with the co-accused, embezzled Rs.10,01,31,000/-

by preparing fabricated documents. From a cursory reading of the records, it is undisputed that the applicant is a nominee for the Axis DEMAT account. It appears that the applicant and the co-accused sold the shares from the informant's Axis DEMAT account and, subsequently, transferred the proceeds into the co-accused's accounts. A substantial amount was transferred to the applicant's account from these accounts. Further, a review of the bank statements reveals that some of the alleged funds were subsequently transferred to Ajmera Realty, where the applicant and the co-accused seem to have invested in real estate. *Prima facie,* the applicant appears to be a recipient of the alleged funds and stood to benefit therefrom.

14. Furthermore, the applicant claims that she is not a joint account holder of an Indian Bank account, where a substantial portion of the alleged funds were diverted; however, in her pleadings, she admits to being a joint account holder. Initially, the Bank officials admitted that the applicant was a joint account holder; however, later, they altered their stance and claimed that the account in question was never a joint account and the co-accused was its sole holder. This inconsistency requires to be investigated.

15. That apart, a non-bailable warrant and a look-out circular

have been issued against the applicant. Although the applicant challenged this warrant by filing Criminal Application No.1551 of 2024 before this Court on 18 October 2024, to date, this warrant has not been stayed by the Court, nor has the applicant been granted protection against its execution.

16. In the totality of the circumstances, the applicant's custody would be necessary to unearth the fraud in all its aspects and find the individuals involved. Releasing the applicant at this stage would hinder the course of an effective investigation. I am, therefore, not inclined to exercise discretion in favour of the applicant. As a result, the application stands rejected. The pending interim application also stands disposed of.

(R.N. Laddha, J.)