IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.3266 of 2024

Bhagwanjee Bhushan Mishra
Age about 45 years, Occ- Service,
Residing at Flat No.D-302,
Geeta Swarg CHS Ltd., Geeta Nagar,
Phase VI, Mira-Bhayander Road,
Mira Road (East), Thane 401 107. ... Applicant

Versus

The State of Maharashtra
(Through Naya Nagar Police Station) ... Respondent

Mr Eliya Ghodke, along with Mr Deepak Thakur i/by Nitieshkumar Verma, for the applicant.
Ms Supriya Kak, APP, for the respondent/ State.
API Mangesh Kad, Nayanagar Police Station, Thane, is present.

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

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.376 of 2024, registered at Nayanagar Police Station, Thane, for offences punishable under Sections 420 read with 34 of the Indian Penal Code.

2. The prosecution alleges that the applicant and the co-

accused fraudulently accepted an advance payment of Rs.34,01,000/- from the informant under the pretext of selling two flats. Despite receiving the part consideration, they neither delivered the flats to the informant nor refunded his money.

3. Mr Eliya Ghodke, the learned Counsel appearing on behalf of the applicant, contends that a sum of Rs.14,00,000/- was deposited into a bank account opened fraudulently in the applicant's name, and a complaint regarding this issue was filed on 22 October 2024. The learned Counsel further contends that the applicant did not induce the informant, and therefore, the essential element of the alleged offences are not applicable. Emphasising the applicant's innocence, Mr Ghodke submits that the applicant has been falsely implicated in the crime without any substantive basis.

4. Ms Supriya Kak, the learned Additional Public Prosecutor representing the respondent/ State, resisting the request for pre-arrest bail, argues that the offence is serious and grave in nature. The applicant and the co-accused deceived the informant into purchasing the applicant's flat and accepted substantial consideration for it. Out of Rs.34,01,000/-, the applicant received Rs.14,00,000/- in his bank account, which the applicant has withdrawn. The learned APP submits that the

investigation is ongoing, and the transferred sum is yet to be recovered. If the applicant is released on pre-arrest bail, he may tamper with the evidence or influence the witnesses.

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

6. It is a settled principle in law that granting anticipatory bail is an extraordinary power. While it has been acknowledged in many instances that regular bail is considered a general rule, the same cannot be applied to anticipatory bail. The decision to grant anticipatory bail should be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. When exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to ***Srikant Upadhyay v. State of Bihar***[1].

7. The applicant is accused of accepting an advance payment of Rs.14,00,000/- from the informant under the pretence of selling a flat booked by the applicant in a building known as Ostwal Origin at Mira Road, Thane. However, the applicant

[1] 2024 SCC OnLine SC 282.

allegedly failed to deliver the flat or refund the money received. The applicant claims that the bank account in which the amount was deposited was fraudulently opened in his name, and to address this issue, he lodged a complaint with the Senior PI of Nayanagar Police Station, Thane, on 22 October 2024. From the perusal of the records, it appears that the applicant became aware of the alleged fraudulent activity only in June 2024, while the applicant filed the complaint four months later in October 2024, likely in response to the investigation in the present FIR, which was filed in September 2024. Further, the records do not provide any indication that the applicant took any further steps to pursue the complaint or seek redress for the alleged fraudulent activity. On the contrary, there is material available on record to show that the applicant directly benefited from the alleged sale transaction, with the funds deposited into his bank account and subsequently withdrawn. *Prima facie,* the material on record, specifically in the form of biometric data, disclosing reasonable grounds to suggest the applicant's complicity. Moreover, the investigation is ongoing, and the applicant's custody would be necessary to unearth the fraud in all its facets. In the totality of the circumstances, this Court finds it difficult to comprehend the applicant's assertion of non-involvement in the alleged crime. At this stage, granting the applicant pre-arrest bail may hinder the progress of an effective investigation.

8. In view of the above, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected.

(R.N. Laddha, J.)