

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Anticipatory Bail Application No.3282 of 2024

Mandar Ashok Tari

Aged about 43 years, Occ: Service,

R/at: Flat No.19, Building No.B-1,

B wing, Narayan Pujari Nagar,

Worli Sea Face, Mumbai - 18

... Applicant

Versus

1. The State of Maharashtra
Through ACB, Mumbai.

2. Goldie Sud
Aged about – years, Occ. Builder,
R/at: 191/ 192, Shaheed Bhagat
Singh Colony, JB Nagar,
Mumbai

... Respondents

Mr Subodh Desai, Senior Advocate, i/by Jash Vyas, for the applicant.

Mr HS Venegavkar, Public Prosecutor, along with Ms Supriya Kak, APP, for respondent No.1/ State.

Mr Goldie Sud, respondent No.2, appearing in-person.

ADCP Rajendra Sangle, along with PI Suhas Hattekar, ACB, Mumbai, present.

Coram: R.N. Laddha, J.

Date: 9 December 2024.

P.C.:

By this successive application, the applicant seeks pre-arrest bail in connection with CR No.23 of 2024, registered with the Anti-Corruption Bureau, Mumbai, for offences punishable under Sections 7 and 7A of the Prevention of Corruption Act, 1988 (for short, 'the Act'). The applicant has filed this application pursuant to the liberty granted to him vide order dated 24 October 2024 in Anticipatory Bail Application No.2372 of 2024 and order dated 29 November 2024 in Interim Application No.4763 of 2024.

2. The prosecution alleges that the applicant, who serves as an Executive Engineer (Designated Officer) with 'K East' Ward of the Municipal Corporation of Greater Mumbai (for short, 'MCGM'), issued a notice to the informant to pull down the unauthorised construction on his land at Andheri, Mumbai. Subsequently, the applicant demanded a bribe of Rs.2 crores from the informant to refrain from initiating legal action regarding the unauthorised structure. Unwilling to comply with the bribe demand, the informant lodged a complaint with the Anti-Corruption Bureau (for short, 'ACB'). Accordingly, acting on the complaint, the ACB set a trap. During the operation, Mohd Shahajada Shah was apprehended while accepting a bribe amounting to Rs.75 lakhs, which was the first instalment of the

Rs.2 crores demand, and Prateek Vijay Pise was apprehended while waiting to receive this bribe amount from Mohd Shahajada Shah.

3. Mr Subodh Desai, the learned Senior Counsel appearing on behalf of the applicant, submits that the prosecution lacks independent evidence to substantiate the alleged demand for a bribe. The *sin qua non* to constitute an offence under Section 7 of the Act requires a demand and acceptance of a bribe. However, the FIR does not indicate any specific demand by the applicant, particularly as the informant was alone in the applicant's cabin when the alleged demand was made.

4. Regarding the alleged acceptance of the bribe, the learned Senior Counsel submits that private individuals allegedly received the money, and no connection has been demonstrated between them and the applicant. There is also no mention of an independent panch witness being present during the co-accused's acceptance of the alleged bribe amount or during their immediate arrest. The only supporting evidence cited by the prosecution is an audio recording, which is cryptic, lacks clarity, and remains uncorroborated.

5. The learned Senior Counsel further submits that the sole reason for seeking the applicant's custodial interrogation

appears to be to obtain his voice sample for verifying the allegations. The applicant, however, is willing to provide his voice sample voluntarily. Similarly, concerning the alleged WhatsApp chats, the applicant is ready to surrender his mobile handset to the investigating agency for examination.

6. Mr Desai, the learned Senior Counsel, highlights that the informant has also accused three other MCGM officers in this matter and even filed an application before the Special Court, praying that these officers also be arraigned as co-accused. However, the Special Court rejected this application, and the informant's challenge to that decision is presently pending before this Court in a Criminal Writ Petition. To date, the investigating agency has not recorded the statements of these three officers.

7. The learned Senior Counsel emphasises that the applicant has been falsely implicated in this case and argues that the entire case hinges on documentary evidence, all of which is already in the possession of the investigating agency, making the custodial interrogation of the applicant unnecessary.

8. On the other hand, Mr HS Venegavkar, the learned Public Prosecutor representing the respondent/ State, submits that upon receiving the complaint, the officers of the ACB

conducted a thorough verification of the allegations. The conversations between the applicant and the informant were recorded using a micro-recorder on three separate occasions. During these recorded interactions, the applicant assured the informant that he would handle everything, including managing the other officers involved. Additionally, the applicant communicated through gestures, instructing the informant to hand over the bribe amount to the co-accused, Mohd Shahajada Shah and Prateek Vijay Pise, and subsequently, they were arrested and remanded to police custody. They also implicated the applicant in the present crime. The verification of their mobile phones revealed that the applicant had been in contact with these individuals.

9. According to Mr Venegavkar, the investigation uncovered a well-defined conspiracy between the applicant and the co-accused to extort money. The applicant's *modus operandi* to commit the crime was that the private individuals would identify potential violations of building regulations, photograph these violations, and send the images to the applicant. The applicant would then issue legal notices and accept illegal gratification in return.

10. The learned Public Prosecutor submits that the

investigation has revealed that the applicant while serving as a government employee, has amassed substantial wealth. The applicant purchased three flats valued at Rs.1,19,68,908/- and a house search uncovered gold jewellery worth over Rs.15 lakhs. The wealth accumulated by the applicant exceeds his known sources of income. The learned Public Prosecutor contends that the applicant's custody is essential to trace the money trail and investigate the matter thoroughly. The possibility of there being similarly circumstanced victims is also imminent. Given these circumstances, the learned Public Prosecutor argues that granting pre-arrest bail to the applicant would jeopardise the course of an effective investigation.

11. Mr Goldie Sud, the informant appearing in-person, submits that he owns the land and building in question. In January 2024, officers of MCGM issued two notices to him, under Section 351 of the Mumbai Municipal Corporation Act, 1888, and Section 55 of the Maharashtra Regional and Town Planning Act, 1966, *inter alia*, alleging unauthorised construction of certain portions of the building and the security gate of the property. Although he responded to the notices, the officers partially demolished his property in February 2024 based on the orders issued to the applicant. He challenged these demolition orders through a writ petition, and this Court set

aside the orders in March 2024. The MCGM officers were directed to provide specific documents and grant him a personal hearing. According to the informant, the applicant and the MCGM failed to comply with the Court's directions, compelling him to file a contempt petition. In June 2024, the applicant issued two additional orders for the removal of the alleged unauthorised structures, which he also challenged through a writ petition, resulting in a stay by this Court. Subsequently, in July 2024, MCGM officer Govind Shelke, a joint Engineer, visited his property without prior notice and threatened further demolition. Concerned, he visited the MCGM office to enquire about these threats. There, he encountered the applicant, along with officers Govind Shelke and Digamber Sonawane, who demanded a bribe of Rs.2 crores. On 27 July 2024, the applicant and two officers visited the informant's property again, reiterated their demand for Rs.2 crores, and instructed him to visit their office. Refusing to comply with this illegal demand, he approached the ACB and filed the complaint.

12. The informant further submits that, during the trap, he handed a bag containing the bribe amount to co-accused Shahajada, who was apprehended while accepting it. Another co-accused, Prateek, was also taken into custody while he was

found waiting to receive the said bribe amount from Shahajada. Upon searching Prateek's car, Rs.9,62,000/- was recovered.

13. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records, including the affidavit-in-reply filed by the informant and the written notes of argument by the applicant.

14. 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 analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straitjacket formula cannot be applied. While 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 & Ors. v. State of Bihar & Anr*¹.

15. Undoubtedly, corruption poses a grave threat to society, undermining public trust and eroding governance. It results in

¹ 2024 SCC OnLine SC 282.

significant losses to the public exchequer and damages the foundations of good governance, necessitating strict measures. In ***CBI Vs Santosh Karnani***², the Hon'ble Supreme Court, *inter alia*, observed as follows :

“31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, “Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority.” Hence, the need to be extra conscious. ”

16. Upon reviewing the records, it appears that the allegations have been made against the applicant, accusing him of demanding and accepting illegal gratification through private intermediaries. On the day the trap was laid, the informant met the applicant at his office, accompanied by the investigating officer, who posed as the informant's driver. During this meeting, the applicant directed the co-accused, Mohd Shahajada Shah, to accompany the informant to the car and

² 2023 SCC OnLine SC 427.

proceed downstairs. Subsequently, Mohd Shahajada Shah was apprehended in the basement while accepting the bribe amount. The records also indicate that the applicant and Mohd Shahajada Shah maintained consistent communication with each other. Additionally, WhatsApp conversations reveal that the applicant was actively coordinating with the co-accused. The recorded conversation between the applicant and the informant *prima facie* suggests the applicant's complicity in the crime. Additionally, it appears that the applicant accumulated wealth exceeding his known sources of income. These elements when taken together *prima facie* link the applicant with the alleged crime. Further, the record also indicates the existence of a well-organised syndicate comprising both officers and private individuals, which requires thorough and unobstructed investigation.

17. Considering the nature of the allegations, the material on record, the ongoing investigation, and the settled legal principles concerning anticipatory bail, this Court finds no justification to exercise discretion in favour of the applicant. Accordingly, the application stands rejected.

18. It is, however, clarified that the observations made in this Order are *prima facie* and are limited to the purpose of

deciding the applicant's entitlement to pre-arrest bail. If the applicant prefers an application for regular bail, it shall be decided on its own merits, in accordance with law, without being influenced by the observations made hereinabove.

(R.N. Laddha, J.)