IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.3371 of 2024

Gaurav Hasmukh Shah
Aged 42 years, Occupation: Unemployed,
of Mumbai, Indian Inhabitant,
residing at: Flat No.1803,
Shree Prafull, Opp. Hitesh Wines,
Dahanukarwadi, Kandivali (West),
Mumbai, Maharashtra - 400067 … Applicant

versus

The State of Maharashtra
through Malad Police Station
having its address at:
Underai Road, Navy Colony,
Mamledarwadi, Malad (West),
Mumbai, Maharashtra - 400064 … Respondent

Mr Chaitanya Malgaonkar, a/w. Mr Melwyn Pereira, Mr Dharmesh Joshi, Mr Nikhil Agrawal, Mr Chirag Shah and Ms Riddhi Mangaonkar, for the applicant.

Mr Amit A Palkar, APP, for the respondent/ State.

PI Mahendra Ghag, Malad Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 11 December 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.582 of 2024, registered at Malad Police Station, Mumbai, for offences punishable under Sections 406 and 420, read with 34 of the Indian Penal Code.

2. The prosecution alleges that the applicant, in collusion with the co-accused, misled the informant and others into paying a total of Rs.1,63,86,400/- under the false promise of securing work visas for Canada.

3. Mr Chaitanya Malgaonkar, the learned Counsel appearing on behalf of the applicant, contends that the applicant was never employed by M/s The Visa Mansion, owned by Rajul Kulshreshth. Instead, the applicant's wife, the co-accused, worked as an overseas recruitment manager for the firm, and received approximately Rs.18,00,000/- as remuneration. The learned Counsel further contends that Rajul received the alleged funds, with no evidence of the applicant benefiting from them, and nothing is to be recovered from the applicant. Asserting the applicant's innocence, the learned Counsel submits that the applicant has been falsely implicated in the present crime. To bolster his submissions, the learned Counsel relied on ***Asha Dubey Vs State of Madhya Pradesh***[1].

4. Mr Amit Palkar, the learned Additional Public Prosecutor

[1] SLP (Cri) No.13123 of 2024 dated 12 November 2024.

representing the respondent/ State, contends that the applicant and the co-accused posed themselves as owners of M/s The Visa Mansion and managed its affairs, including withdrawing funds deposited with the firm. The applicant received a notice under Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), on 21 October 2024 but failed to cooperate with the investigation, absconding and prompting the issuance of a Look-Out Circular. The learned APP, highlights the applicant's criminal antecedents, accusations of deleting critical data from a laptop, and the existence of over 18 victims, with more likely to emerge. According to the learned APP, the applicant's custody is essential to find the money trail and identify other individuals involved.

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

6. 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. 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

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 Vs State of Bihar***[2].

7. The applicant stands accused of embezzling Rs.1,63,86,400/- by falsely claiming to secure work visas for Canada. Upon perusing the records, it appears that the applicant and the co-accused portrayed themselves as proprietors of M/s The Visa Mansion, managed its affairs, and withdrew deposited sums before closing operations. *Prima facie,* the applicant and the co-accused benefited from the alleged funds. Although the applicant claims that his wife, the co-accused, filed a non-cognisable complaint about threats from Rajul, there is nothing on record to indicate if the co-accused took further legal recourse. The learned Counsel for the applicant submits that upon learning of the offence registration

[2] 2024 SCC OnLine SC 282.

on 7 July 2024, the applicant returned to India from Nepal in October 2024. He filed an anticipatory bail application before the Sessions Court on 11 October 2024, which was rejected on 19 October 2024. The applicant then filed the present application only on 9 December 2024, without providing an explanation for the delay in approaching this Court, raising questions about his intentions. Additionally, a Look-Out circular has been issued against the applicant. Moreover, the applicant has criminal antecedents. The ongoing investigation has revealed more than 18 victims, with the possibility of additional similarly situated victims. The applicant's custodial interrogation is deemed necessary to unearth the fraud in all its facets and find the money trail.

8. Considering the nature of the offences, the allegations against the applicant, and the fact that the applicant has remained unavailable for investigation, 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.)