

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3397 OF 2024**

Nikhil Sunil Shinde ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Anil S. Kamble a/w. Ms. Sujata Shirsi, Ms. Jinal Mehta and Mr. Ganesh Shinde for applicant.

Mr. Sagar R. Agarkar, APP for respondent-State.

Mr. Sagar Patil, API, Sahakarnagar Police Station, District Pune City.

CORAM : MANISH PITALE, J.

DATE : 16th DECEMBER, 2024

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0247 of 2024 dated 25.07.2024, registered at Sahakarnagar Police Station, District Pune City, for offences under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant in the present case has claimed that the applicant and the co-accused person cheated him of huge amount of money on the false promise of arranging for liquor license i.e. FLII CLIII license for a friend of the informant. Details of payments made to the applicant and the co-accused person, have been given in the statement, leading to registration of FIR.

4. The learned counsel for the applicant submitted that even if the claims made by the informant are to be taken into consideration, the real aggrieved person in the present case could perhaps be the

friend of the informant i.e. Samadhan Gilbile or his father-in-law Sambhaji Mhalaskar. It is submitted that this is all the more evident from a Memorandum of Understanding (MOU) executed between the said Sambhaji Mhalaskar and the informant on the one hand and the applicant on the other. The said document simply states that an amount of ₹ 2.25 crores would have to be paid eventually to the applicant and the co-accused person for arranging FLII CLIII license. It is further submitted that the FIR is highly belated and the informant himself having retained certain amount, he could certainly not be the aggrieved person in the facts and circumstances of the present case.

5. On the other hand, the learned APP referred to the investigation papers, particularly the copy of the aforesaid MOU. It is submitted that transfer of amounts in the account of the applicant has been specifically stated and therefore, ingredients of the offences are made out against the applicant.

6. Having perused the papers, this Court is of the opinion that the applicant has made out a *prima facie* case in his favour. This is because the statement of the informant itself shows that the alleged transfer of amounts in favour of the applicant and the co-accused person, was undertaken in November 2020 and December 2020. There is no explanation in the statement of the informant as to what took him almost 4 years to reach out to the police for registration of FIR. *Prima facie*, the FIR can be said to be delayed.

7. Apart from this, the role of the informant himself *prima facie* appears to be dubious. It is not as if the informant was desirous of obtaining the FLII CLIII license. According to him, his friend

Samadhan Gilbile was interested in obtaining the liccense and in that backdrop, the aforesaid MOU was said to have been executed with the father-in-law of the said Samadhan Gilbile, being a party to the MOU alongwith the informant. A perusal of the copy of the said MOU, forming part of the investigation papers, would show that although there are signatures and photographs of the parties to the MOU, there is no specific date mentioned on the said document, except for indicating that it was executed in November 2020.

8. Apart from this, the contents of the said document simply indicates that an amount of ₹ 2.25 crores was to be paid to the applicant for arranging FLII CLIII license.

9. The statement of the informant further shows that Samadhan Gilbile transferred an amount of ₹ 10 lakhs into the account of the informant on 18.11.2020 and the informant, in turn, transferred ₹ 5 lakhs into the account of the applicant and ₹ 2 lakhs into the account of the co-accused person on 19.11.2020. Similarly, it is claimed that on 30.12.2020, the said Samadhan Gilbile transferred an amount of ₹ 15 lakhs into the account of the informant and that the informant, in turn, transferred an amount of ₹ 10 lakhs in favour of the co-accused person. In this manner, total amount of ₹ 17 lakhs was transferred to both the accused persons, including the applicant. But, the crucial fact that becomes evident from the aforesaid statement itself is that the informant retained a total amount of ₹ 8 lakhs with himself in the aforesaid process. Considering the fact that the informant has not even alleged that he was the person to whom the FLII CLIII license was to be issued, his role *prima facie* comes out to be dubious and the FIR having been registered after about 4 years, it can be said that a strong *prima facie* case is made out in favour of the

applicant.

10. In view of the above, the application is allowed in the following terms:

- (i) In the event the applicant is arrested in connection with FIR No. 0247 of 2024 dated 25.07.2024, registered at Sahakarnagar Police Station, District Pune City, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant shall remain present before the Investigating Officer on 18.12.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

11. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

12. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application stands disposed of.

(MANISH PITALE, J)