IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No. 3086 of 2024

Dinath Sudhakar Shetty
Aged about 30 years, Occ. Business,
R/at. 003/A, Shreeji Tower CHS Ltd.
Gita Nagar, Mira Road,
Maharashtra – 401 107. … Applicant

versus

1. The State of Maharashtra
(At the instance of Santacruz Police Station)

2. Suraj Raghuveer Shetty
Flat No.302, Dev Residency,
Road No.4, Juhu,
Vile Parle (W), Mumbai. … Respondents

with

Interim Application No. 4713 of 2024

in

Anticipatory Bail Application No. 3086 of 2024

Suraj Raghuveer Shetty
Age 53 years, Occ. Business,
Adult, Indian Inhabitant,
R/at. Flat No.302, Dev Residency,
Road No.04, Juhu,
Vile Parle (W), Mumbai. … Applicant / Intervenor

In the matter between
Dinath Sudhakar Shetty

Aged about 30 years, Occ. Business,
Adult, Indian Inhabitant,
R/at. A/003, Shreeji Tower CHS Ltd.
Behind Old Petrol Pump,
Mira Road (E), Thane. … Applicant

versus

The State of Maharashtra
(Through Santacruz Police Station
Vide C.R. No.1065 of 2024) … Respondent

Mr Prashant Pandey, a/w Mr Dinesh Jadhwani, Ms Riddhima Mangaonkar, and Mr Krishna Joshi i/b Akshay Shetty, for the applicant.
Mr Arfan Sait, APP, for respondent No.1 / State.
Ms Anjali Patil, for respondent No.2.
PSI Amol Divekar, Santacruz Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 16 December 2024

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No. 1065 of 2024, registered at Santacruz Police Station, Mumbai, for offences punishable under Sections 408, 420, 467 and 477-A read with 34 of the Indian Penal Code.

2. The prosecution alleges that the applicant, who served as

the operational manager of five branches of the Banana Leaf Restaurant, misappropriated Rs.1,23,03,337/- by directing his subordinates to deposit the funds into unauthorised bank accounts.

3. Mr Prashant Pandey, the learned Counsel appearing on behalf of the applicant, contends that the applicant resigned from the informant's employment in March 2024. After that, he opened his restaurant in Mangalore, and the FIR is a retaliatory action against the applicant's new restaurant. The funds in the applicant's bank account consist of money collected from relatives, personal investments, and loans obtained from financial institutions rather than the allegedly misappropriated funds. The learned Counsel, asserting the applicant's innocence, submits that the applicant has been falsely implicated in the present crime.

4. Mr Arfan Sait, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Anjali Patil, the learned Counsel appearing for respondent No.2, jointly submit that the offence is serious. Further, the learned APP, drawing the attention of this Court to the witnesses' statements, contends that the applicant, as a superior, instructed the cashiers of five restaurant branches to deposit the collected cash

in various accounts and, subsequently, used the funds for personal gain. The applicant's custody is necessary to ascertain the money trail and the individuals involved.

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

6. It is a settled position in law that granting pre-arrest 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 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. A profitable reference in this regard can be made to ***Srikant Upadhyay Vs State of Bihar***[1].

7. The applicant is accused of embezzling Rs.1,23,03,337/- from the informant's five branches of the Banana Leaf Restaurant while serving as an operational manager. It is undisputed that the applicant was in charge of the financial operations of the restaurant's five branches. After resigning

[1] 2024 SCC OnLine SC 282

from the job, the applicant started his restaurant in Mangalore. A perusal of the records, particularly the statements of the applicant's former co-workers, indicates that the applicant instructed the cashiers at these five branches to deposit the collected cash into various accounts that the restaurant owner did not authorise. Further, the interior designer's statement reveals that the applicant transferred Rs.12,53,500/- to her for the renovation work of his restaurant in Mangalore. *Prima facie,* the material on records reveals that the applicant benefitted from the alleged funds by transferring them to various accounts and utilising them for personal gain. The investigation is in progress, and the applicant's custody is necessary to ascertain the money trail and unearth the fraud in all its aspects. Releasing the applicant at this stage may hinder the effective course of the ongoing investigation. In these circumstances, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application for pre-arrest bail stands rejected. The pending interim application also stands disposed of.

(R.N. Laddha, J.)