

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1224 OF 2024

Inamuddin Najmuddin Khan

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Varad Dubey, Advocate i/by Mr. Suhas Kadu for Applicant.
- Mr. Mayur Sonavane, APP for Respondent No.1 – State of Maharashtra.
- Mr. Vivek Arote, Advocate for Intervenor appointed through legal aid.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2025

P.C.:

- 1.** Heard Mr. Dubey, learned Advocate for Applicant; Mr. Sonavane, learned APP for Respondent No.1 – State of Maharashtra and Mr. Arote, learned Advocate for Intervenor appointed through legal aid. Perused the entire record and orders passed by this Court.
- 2.** At the outset, Mr. Dubey on instructions received from Applicant makes a statement that he shall pay the entire balance amount to the Complainant within a period of two weeks from today.
- 3.** The present Anticipatory Bail Application stands allowed in view of the fact that this Court cannot become a recovery agent of the Complainant before the Court. Reasons are given herein under. This is a sorry state of affairs which is observed by this Court in all such

similar matters.

4. The present Application is filed on 24.04.2024. It is heard by this Court on 03.05.2024 for the first time. It is heard at length on 07.05.2024 and a detailed order is passed giving interim relief to the Applicant which is as good as the final relief. Thereafter the matter is once again heard on 02.07.2024 and a working order is passed wherein notice is issued for the first time to the First Informant. Thereafter the matter is once again heard at length on 31.07.2024 and Advocate is appointed to represent and espouse the cause of First Informant. This is a matter of cheating under Section 420 of Indian Penal Code, 1860.

5. The matter is thereafter heard on 02.12.2024 when once again it is recorded that Applicant is ready and willing to pay Rs.4,50,000/- to the First Informant. Intermittently the matter is also listed several times before the Court. Thereafter once again on 03.12.2024, the matter is listed before the Court and heard and at joint request of the parties, it is once again adjourned to 08.01.2025.

6. The trajectory of the matter, which is described above is evident from the orders passed in the present Application. On the issue of merits, the Applicant has sought Anticipatory Bail. The First Information Report (for short '**FIR**') is at page No.36 of the Application. It is seen that Applicant was developing one site and constructing

residential rooms and case of the Complainant is that she invested Rs.4,00,000/- with the Applicant for the room. However, the Applicant did not construct the residential rooms nor returned the amount to First Informant – Complainant. Hence, FIR came to be filed in the year 2023 for cheating. There are no antecedents whatsoever of a the Applicant. Dispute *prima facie* would be of a civil nature only. It is a wrong practice followed by filing Criminal prosecution and complaints in such facts and what is evident from the aforementioned orders is that this Court has been relegated to a recovery Court in such Anticipatory Bail matters. What is lost sight of is the fact that such matters when heard take up substantial time of the Court, they are kept pending all the time and genuine matters deserving attention for Anticipatory Bail Application matters are not reached. The various orders passed in this very matter prove the above proposition.

7. What is further shocking is that the appointed Advocate through the legal aid has virtually become the mouthpiece of the Complainant. He would submit that the Complainant has instructed him to submit to the Court that Applicant should also be directed by the Court to pay interest for the delay in payment to the Complainant. If the Complainant desires any such order or relief, Complainant can take recourse to appropriate proceedings in civil law as available to her. I am not at all impressed by the submissions made by Mr. Arote, the appointed Advocate in this case. His request made stands rejected.

The aforesaid orders which are referred to passed previously have already consumed substantial time of the Court during the previous hearings. Reference is made to the decision of the Supreme Court in the case of ***Ramesh Kumar Vs. State (NCT of Delhi)***¹. The Supreme Court holds that criminal proceedings are not for realisation of disputed dues and thus a criminal Court exercising jurisdiction to grant bail / anticipatory bail is not expected to act as a recovery agent to realise the dues of the Complainant, and that too, without any trial(*emphasis supplied*).

8. In the present case, it is seen that the Complainant has not instituted any civil Suit for recovery of her money allegedly paid to the Applicant for construction of the room. Considering the facts in the present case and having regard to the nature of dispute between the parties herein which is predominantly and admittedly civil in nature, process of criminal law cannot be pressed into service for settling a civil dispute in this fashion.

9. In view of the above, I refuse to adhere to the submissions made by learned appointed Advocate for the Complainant. The statement of the Advocate for Applicant made today before the Court and reproduced in paragraph No.2 above is accepted. Applicant shall file such Affidavit of Undertaking within a period of one week from today that he shall pay the balance amount to the Complainant as

¹ (2023) 7 Supreme Court Cases 461.

stated by him through his Advocate. Considering the above history of the present matter, no purpose will be served by adjourning the present Anticipatory Bail Application and keeping it pending.

10. The Anticipatory Bail Application stands allowed in terms of prayer clause (a), however subject to the following terms and conditions:-

- (i) In the event of the arrest, Applicant be enlarged on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer at concerned Police Station, as and when called for by the Investigating Officer for investigation;
- (iii) Applicant shall furnish particulars of his address and mobile number to the Investigating Officer within one week from today;
- (iv) Applicant shall not misuse his liberty in any manner or influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence; and
- (v) It is directed that Applicant shall extend complete cooperation in the investigation of the instant case.

- 11.** Parties to act on a server copy of this order.
- 12.** Anticipatory Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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