

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1584 OF 2024

Snehalkumar Ashwinbhai Savani

...Applicant

versus

State Of Maharashtra

...Respondent

Mr. Sandesh D. Patil i/b. Prithviraj S. Gole, Advocate for the Applicant.

Mr. Anand S. Shalgaonkar, APP for the State.

Ms. Tanaya Goswami, Advocate for Respondent No.2.

Mr. Mahesh Kadam, API Vile Parle Police Station.

CORAM : RAJESH S. PATIL, J.

DATED : 29 JANUARY 2025

P.C.:

1. The Applicant is seeking anticipatory bail in connection with the F.I.R. No.341 of 2020 registered at Vile Parle Police Station, District Mumbai under Sections 406, 420, 504, 506 of the Indian Penal Code, 1860.

2. It is the case of the prosecution that the Complainant was

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introduced to one Ashokkumar Kantilal Upadhyay who is Accused No.1 through Ashwin Babriya and was told that he was a very well known broker who carry's out international deals of selling diamonds. The Complainant further stated that Ashokkumar Upadhyay representing the Complainant that his son is employed in shipping companies and hence the Accused can procure prospective international purchaser and thus he can carry out international dealings in diamonds and earn huge profits and can also help the Complainant, as well to make huge profit by selling diamonds.

3. It is further alleged that in the period between July 2018 and October 2018, on multiple occasions, the said Ashokkumar Upadhyay had taken sample diamonds from the Complainant under the pretext of showing them to the prospective purchaser and had also duly returned to the Complainant that they were rejected by the prospective purchasers. It is further alleged that on 15 October 2018, the said Ashokkumar Upadhyay had met the Complainant and had told that the said Ashokkumar Upadhyay had met one prospective purchaser who would place order of diamonds in large quantity and hence the said Ashokkumar Upadhyay would require more diamonds and hence the Complainant had handed over diamonds worth Rs.1,08,47,407/- to the

said Ashokkumar Upadhyay and according got receipts signed through said Ashokkumar Upadhyay.

5. On 16 October 2018, the said Ashokkumar Upadhyay requested for some more diamonds and agreed to give cheques as security deposit. It is further alleged that the said Ashokkumar returned the said additional diamonds after two months, However, he had not returned the diamonds worth Rs.1,08,47,407/-. It is further alleged that the said Ashokkumar Upadhyay was from time to time requested to return the diamonds, however, the said diamonds were never returned and when the Complainant had asked for the said diamonds, the said Ashokkumar Upadhyay had threatened the Complainant with dire consequences.

6. Mr. Patil, the learned Advocate for the Applicant submits that as far as Ashokkumar Upadhyay is concerned, he was granted bail by the order dated 5 September 2022 by the Sessions Court at Dindoshi. The said order in paragraph No.3 mentioned of consent terms being entered between the Informant and Accused No.1 (Ashokkumar). The paragraph No.3 of the said order reads as under :

“3.Obviously, the complainant namely Bharat Vanmalibhai Modiya appeared before this Court and filed his affidavit vide

Exh.05 whereby he has contended that the present applicant/accused paid the partial amount out of the said amount and ready to pay the same as per the Consent Term whereby he has no objection to grant the bail. No doubt, the parties settled their matter out side the Court & the complainant has no objection for granting the bail. Moreover, the Investigation Officer has already made the substantial investigation but framing of the charge, recording the evidence & final decision of the case would take its own time. The applicant/accused is the permanent resident of ISKON Megacity2, Bungalow No.25, Near Himalaya Mall Bhavnagar, Gujrat. The applicant/accused is ready to abide all the terms & conditions imposed by the Court & thus the purpose of the prosecution would be solved if some reasonable conditions are imposed.”

[Emphasis Supplied]

6. Ms. Tanaya Goswami, the learned Advocate appearing for informant informs that while the Bail Application for Accused No.1/Ashokkumar Upadhyay, was being heard, her client received a sum of Rs.50,00,000/-. Consequently, her client did not object to granting bail to Accused No.1 before the Sessions Court.

7. Similarly, the Bail Application was moved by Accused No.2/Kolaadiya Rajeshbhai Lallubhai. The Sessions Court by its order dated 28 February 2024 granted bail to Accused No.2. The paragraph No.3 of the said order reads as under :-

“3. Obviously, the complainant namely Bharat Modiya appeared before this court and filed his affidavit vide Exh.6 whereby he has contended that the present applicant/accused paid the partial amount out of the said amount and ready to pay the same as per the consent terms whereby he has no objection to grant the bail. No doubt, the parties settled their matter out side the court and the complainant has no objection for granting the bail to the present applicant/accused.”

[Emphasis Supplied]

8. The learned Advocate appearing on behalf of the Informant submits that as regards Accused No.2, her client gave no objection to grant bail, since Accused No.2 paid a sum of Rs.15,00,000/- to the Informant. She further submits that balance of Rs.43,00,000/- is yet to be received by her client hence, she is objected for grant of bail to Accused No.3.

9. Mr. Patil, the learned Advocate for the Applicant, submits that there is no privity of contract between his client and the informant. He argues that the informant, in his statement to the police, stated that he had given diamonds to Mr. Ashokkumar (Accused No.1), who, in turn, as per his own statement, sold the diamonds to Accused Nos. 2 and 3. However, the present Applicant (Accused No.3) has no privity of contract with the informant. The entire transaction, according to Mr. Patil, appears to be of a civil nature, but the police have wrongly given it a criminal color and have acted as recovery agent.

10. In the Judgment of the Supreme Court in the cases of (a) *Sarbjit Kaur V/s. The State of Punjab & Anr*, in *Criminal Appeal No.581 of 2023*, (b) *Hridaya Ranjan Prasad Verma V/s. The State of Bihar & Anr* reported in (2000) 4 SCC 168 it has been held that where

there is purely a civil dispute between the parties, criminal proceedings should not be entertained which is merely filed to pressurize the parties into settling the dispute. The paragraph no. 13 of **Sarbjit Kaur (supra)** reads as under :

“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

11. The paragraph no. 15 of Hridaya Ranjan Prasad Verma (**supra**) reads as under :

“In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal

prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

11. Taking into consideration the law laid down by the Supreme Court in above judgment and the facts of the present proceedings, in my view, the custodian interrogation is not necessary. Case has been made out to grant Anticipatory Bail to present Applicant.

12. Hence, the following order:

(i) In the event of his arrest in connection with C.R.No.341 of 2020 registered at Vile Parle Police Station, District Mumbai, the Applicant be released on bail on his executing P.R. bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

(ii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

(RAJESH S. PATIL, J.)