

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2373 OF 2024

SN Rajarajan ...Applicant
versus
The State of Maharashtra & Anr ...Respondents

Adv. Ashish Chavan a/w. Mayur Mohite a/w. Ravi Uikey, Advocate for the Applicant.

Ms. Rutuja A. Ambekar, APP for the State-Respondent No.1.

Mr. Sandeep Karnik a/w. Mr. Vishwajeet Nimbalkar, Advocate for Respondent No.2.

Mr. Vaibhav Katkar, PI Khar Police Station is present.

CORAM : RAJESH S. PATIL, J.

DATED : 28 JANUARY 2025

P.C.:

1. The Applicant is seeking anticipatory bail in connection with the F.I.R. NO.0230 of 2023 registered at Khar Police Station, Brihanmumbai under Sections 406, 409, 420 with 34 of the Indian Penal Code, 1860.

2. This pertains to the release of the movie “1945” (Tamil Version) on an Over the Top platform (for short “OTT). The present Applicant is the Accused No.1 in the F.I.R. lodged, where there are two accused who are producers. According to the APP, the Accused No.2 has cooperated, and his statement has been recorded. As far as the Accused No.1, the present applicant, is concerned, he is absconding. Initially, he was granted transit bail by the High Court of Madras on 12 April 2024. The Transit Anticipatory Bail was granted for a period of six weeks, on certain conditions. The paragraph No.5 of the said bail order reads as under :

“Accordingly, interim interstate anticipatory bail is granted to the Petitioner for a period of six weeks, on condition that the petitioner shall surrender before the () learned Vth Metropolitan Magistrate, Egmore, Chennai, within a period of fifteen days from the date on which the order copy made ready and each of the petitioner shall execute a bond a for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the said learned Magistrate. Further, within six weeks from the date of execution of bail bond the petitioners shall approach the competent Court in Mumbai and seek for appropriate relief.”*

3. Admittedly, the present Applicant/Accused No.1 has not complied with the first condition, i.e., execution of a bond of Rs. 10,000/- with two sureties each for a like sum to the satisfaction of the said learned Magistrate.

4. The only reason submitted before me today for non compliance is that the Applicant/Accused No.1 was unwell. To elaborate on the same, the learned Advocate appearing for the Applicant has shown this Court certain medical papers, which form part of the present Anticipatory bail Application from Page No.75 to 82.

5. On going through the photocopies of medical papers, one cannot conclude that the Applicant was admitted to a hospital in Chennai on 13 June, 2024. It is not seriously the case of the Advocate appearing for the Applicant that the Applicant/Accused No. 1 was admitted to a hospital during the relevant time. In any event, the medical papers pertain to June 2024. Thereafter, the Applicant is absconding and not cooperating with the police.

6. The prosecution's case is that a "Licensing Agreement" dated 30 September 2019 was entered into between the Complainant's Company and the proprietorship firm of Applicant No.1. The said licensing agreement was for a period of five years, whereby the movie "1945" (Tamil version) was a part. The Accused, as producer of the movie "licensor", were to grant the rights to the licensee company, i.e, the Complainant, to release the movie on an OTT platform. It is further case

of the Complainant that the sum of Rs.1,54,00,000/- was paid to the Applicant/Accused No.1. There is no denial of the said amount of Rs.1,54,00,000/-.

7. It is the further case of the Complainant that prior to the execution of the licensing agreement dated 30 September 2019 , an Award dated 7 September 2019 was passed against the present Applicant/Accused No.1 and against his proprietorship firm. The claimant in the said award was one M/s. Arka Media Works. Pursuant to the said award, which pertained to three movies including “1945” (Tamil version), a lien was created in case of non-payment by the present Applicant/Accused No.1.

8. It is the case of the prosecution that despite being aware that a lien was created pursuant to the award passed by the Sole Arbitrator on 7 September 2019, the Accused did not disclose this fact to the Complainant. In fact, in the licensing agreement dated 30 September 2019, under Clause No.7(a) and Clause No.7(b), it is specifically stated that there is no lien. Hence, according to the prosecution, this amounts to a clear breach of trust and cheating committed by the Accused.

9. It is case of the Applicant/Accused No.1 that he faced severe financial difficulties during the Covid-19 period. Hence, though a sum of Rs.1,54,00,000/- was received, he was unable to release the movie “1945” (Tamil version) in favour of the Complainant as already M/s. Arka Media Works and obtained the rights. The only argument put forth by Accused No.1 is that though a subsequent correspondence, the Complainant was made aware of the award passed against the Applicant/Accused No.1, and therefore, he cannot comply with his obligations under the licensing agreement.

10. Mr. Karnik, the learned Advocate for the Complainant submits that it is important to note that the licensing agreement was executed prior to Covid-19 period, and the payment made and duly received by Accused No.1 occurred well before the pandemic started. Hence, the Accused could not take defence that he was unable to release the movie due to the pandemic. He further submits that as far as Arka Media Works is concerned, the Accused also cheated them, and despite an award being passed, he has not complied with the directions of the award and M/s. Arka Media Works is now pursuing the Accused.

11. It is my view that the Applicant/Accused No.1, being fully aware

of the award passed him on 7 September 2019, which included the creation of a lien for the release of three movies, including the subject movie “1945” (Tamil version), has acted in disregard of the said award. He has committed the offences of breach of trust and cheating by entering into an agreement with the Complainant on 30 September 2019. There is no dispute that the entire sum of Rs.1,54,00,000/- was received by the Accused well before the Covid-19 period.

12. As a matter was argued, it was suggested by the Advocate for the Applicant that in order to grant anticipatory bail, the Applicant should demonstrate his *bona fides* by depositing 50% of the sum paid to him on 20 October 2019. However, the learned Advocate appearing for the Applicant/Accused No.1 submits that after taking telephonic instructions from his client, he has conveyed that at most, his client is willing to deposit a sum of Rs.10,00,000/- to show his *bona fides*. The learned Advocate for the Applicant submits that the sum of Rs.1,54,00,000/- was paid five years back. Today, the Accused is not willing to deposit 50% principal amount.

13. The learned APP appearing for the State submits that there are several cases registered against the Accused, including a Complaints

under Section 138 of the Negotiable Instrument Act. She submitted that the Accused has not complied with the directions given by the Madras High Court in its order dated 12 April 2024 regarding transit bail. Therefore, no leniency should be shown to such an accused. She also further submitted that the medical papers relied upon by the Accused are dated 13 June 2024. She also submitted that the Accused is on the run and has not been willing to cooperate with the police. Additionally, three notices under Section 41A were issued to the Applicant, but the Applicant has not cooperated with Police.

14. Two judgment were referred of the Supreme Court, on behalf of the Applicant 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. In both cases, the Supreme Court has held that where there is a purely civil dispute between the parties, criminal proceedings should not be entertained which is merely filed to pressurize the parties into settling the dispute. In both cases, there was a breach of contract.

15. In the present proceedings, it is pertinent to note that an award was passed against the Accused on 7 September 2019, whereby a lien was

created on three properties. The Applicant, on 30 September 2019, entered into a licensing agreement, and in clause 7, it is clearly mentioned that there is **no lien** over the movie “1945”. It is also important to note that the licensing agreement is duly signed by both parties, and all pages of the licensing agreement bear the logo of the Accused at the top of page and the address of the Accused at the bottom of each page. This fact, *prima facie*, shows that the licensing agreement were prepared by Accused and thereafter signed by both the parties. This shows the intention of the Accused obtained transit bail from High Court at Madras on 12 April 2024 and thereafter didn't comply with the condition of transit bail. No proper explanation on medical papers in coming forward from the Accused.

16. In my view, no case has made out by the Applicant, to entertain the present Anticipatory Bail Application. Therefore, **the Anticipatory Bail Application is dismissed.**

(RAJESH S. PATIL, J.)