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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3174 OF 2024

Pawan Kumar, and
Usha Kumari ... Applicants
V/s.
The State of Maharashtra ... Respondent

Ms. Jasmin Purani i/by A and D Legal for the applicants.

Mrs. Kranti T. Hiwrale, APP for the respondent-State.

Mr. Suraj Jadhav, PSO, Kharghar Police Station, Navi Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 29, 2025

P.C.:

1. The applicant, apprehending arrest in connection with Crime Register No. 49 of 2024 registered with Kharghar Police Station, for offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860, has approached this Court seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973.

2. As per the prosecution, the complainant, a 42-year-old businessman from Navi Mumbai, has alleged that applicant No.1 borrowed a sum of Rs.1 crore in 2020, assuring repayment within one year. Relying on their earlier relationship, the complainant advanced the amount in several cash installments between August

2020 and December 2021. The payments were witnessed by applicant No.2 and one Rakesh Kumar Pandit. To secure repayment, applicant No.1 issued several post-dated cheques from his and applicant No.2's bank accounts in Punjab National Bank. However, when the complainant presented the cheques, they were dishonored for insufficiency of funds. On being confronted, applicant No.1 assured the complainant that the amount would be repaid after disposal of a property.

3. In March 2022, applicant No.1 again requested the complainant to re-deposit the cheques. They were again returned unpaid. Despite repeated demands, repayment was not made. On 17 May 2022, applicant No.1 executed an irrevocable power of attorney in favour of the complainant in respect of his property. However, on 5 June 2022, he left his residence along with his family and belongings after a family dispute and could not be traced. The complainant thereafter filed proceedings before the Mazgaon Court under Section 138 of the Negotiable Instruments Act. The applicants failed to appear in those proceedings, leading to issuance of a warrant. In July 2023, exercising rights under the power of attorney, the complainant took possession of the property and expressed willingness to return it on repayment of the loan. Later, in September 2023, the complainant received a notice from Bharat Cooperative Bank regarding default of a housing loan of Rs.55 lakh on the same property. The complainant, therefore, alleged that applicants No.1 and 2, in conspiracy, committed fraud, criminal breach of trust and cheating. On this basis, the present FIR came to be registered.

4. Learned counsel for the applicants relied upon the interim order of this Court dated 28 November 2024, whereby interim protection was granted. It is submitted that in compliance with that order, the applicants have cooperated with the investigation and have not misused the liberty. Referring to the reasons recorded in paragraph 6 of the interim order, she urged that the same considerations warrant continuation of protection in favour of the applicants.

5. On the other hand, the learned APP opposed the application. It is contended that the allegations are serious in nature. However, the investigation is now almost complete and filing of charge-sheet is expected in the coming week. She, therefore, sought rejection of the application.

6. I have considered the rival submissions and perused the record. The offence alleged is primarily based on monetary transactions between the parties arising out of a loan advanced by the complainant. The allegations do show dishonour of cheques and default in repayment. However, substantial part of the dispute relates to civil liability arising out of loan and property transaction. For such transactions, the complainant has already initiated proceedings under Section 138 of the Negotiable Instruments Act.

7. The investigation in the present case has progressed. The applicants have cooperated pursuant to interim protection granted by this Court on 28 November 2024. There is no material to show that the applicants have misused liberty or attempted to influence the complainant or witnesses. The charge-sheet is now to be filed shortly. Hence, custodial interrogation of the applicants is not necessary at this stage.

8. The power of attorney in respect of the property has already been executed in favour of the complainant. The complainant has also taken possession of the property. The dispute regarding the alleged loan and outstanding dues is therefore well documented. The applicants' conduct during the interim period shows that they are available for investigation and are not likely to abscond.

9. The offence alleged is punishable with imprisonment up to seven years. The applicants are permanent residents and there is no risk of absconding if protection is continued. The object of bail is not to detain a person for punitive purpose before trial but to secure his presence during investigation and trial. In these circumstances, the balance of convenience lies in favour of granting bail with suitable conditions.

10. Considering the above factors, I am of the view that the applicants deserve continuation of protection under Section 438 of the Code of Criminal Procedure.

11. Hence, following order is passed:

a) In the event the applicants are arrested in connection with FIR No.49 of 2024 registered with Kharghar Police Station, Navi Mumbai, they shall be released on bail on furnishing P.R. Bond of Rs.50,000/- each and one or two sureties in the like amount, to the satisfaction of the Trial Court.

b) The applicant shall remain present before the police station concerned as and when called by the Investigating Officer.

c) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

12. The application for anticipatory bail is allowed and disposed of.

(AMIT BORKAR, J.)