AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3324 OF 2024

Smita Bharat Pathare, and
Pritesh Bharat Pathare … Applicants
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.2495 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.3324 OF 2024

AND

INTERIM APPLICATION NO.408 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.3324 OF 2024

Dency Silby … Applicants
In the matter between
Smita Bharat Pathare, and
Pritesh Bharat Pathare … Applicants
V/s.
The State of Maharashtra … Respondent

Mr. Nikhil Wadikar (through V.C.) with Niranjan Kandade for the applicants.

Mrs. Rajashree V. Newton, APP for the respondent-State.

Mr. Ashwin Hawelikar for the applicants in IA/2495/2025 & IA/408/2025.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 15, 2025

P.C.:

1. The present bail application is filed under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), wherein the applicants are seeking regular bail in connection with Crime Register No.317 of 2024 registered with Kharghar Police Station for offences punishable under Sections 420, 406, 504, and 506 of the Indian Penal Code, 1860 (IPC).

2. The case of the prosecution, in brief, is that the husband of the informant, a resident of Kharghar, was employed in the Merchant Navy. Applicant No.1, who was his teacher, along with Applicant No.2, was running a café at Belapur. Both applicants expressed their intention to start a new café at Kharghar. The husband of the informant also wished to start such a business. Accordingly, in October 2023, Applicant No.1 suggested that a partnership be formed. The husband of the informant proposed that the informant herself be taken as partner. It was agreed that the informant and her husband would invest 70% of the capital, while the applicants would invest 30%. Profits were to be shared in the ratio of 60% to the informant and her husband, and 40% to the applicants. Pursuant thereto, on 21 February 2024, a café was started near Bhagwati Freen Tower, Central Park, Kharghar.

3. The informant further states that Applicant No.1 represented that a GST number was required and, therefore, obtained the documents of the café in his own name. The informant and her husband bore all expenses for starting the café and pressed for execution of a partnership deed, which the applicants allegedly avoided. Applicant No.2, son of Applicant No.1, was engaged with a salary of Rs.50,000 per month. It is the case of the informant that under the pretext of preparing a partnership deed, the applicants induced her and her husband, took control of the café, and excluded them. She claims to have invested Rs.38,50,000 and alleges that the applicants have committed criminal breach of trust and cheating.

4. Learned counsel for the applicants submits that the dispute is of civil nature arising out of a failed partnership business. The parties intended to start a venture, but the business did not yield expected profits. If the informant is aggrieved by non-repayment of her investment, her proper remedy is to file a civil suit for recovery. The facts do not indicate any dishonest intention on the part of the applicants at the inception of the transaction. It is, therefore, prayed that the applicants be granted protection.

5. On the other hand, the learned APP and the counsel for the informant submit that the applicants' conduct reveals dishonest intention from the beginning. It is argued that although the profit-sharing ratio was initially agreed at 40% for the applicants and 60% for the informant and her husband, the applicants unilaterally altered it to 30% and 70% without consent. It is further submitted that the manner in which the applicants dealt with business expenses shows misappropriation of funds. The café has now been permanently closed, which, according to the informant, further establishes the dishonest conduct of the applicants. It is, therefore, prayed that the application for bail be rejected.

6. I have considered the rival submissions. The documents on record show that the parties had entered into a business arrangement to start a café. The investment was made by both sides, and profits were to be shared. The informant alleges that the applicants acted dishonestly and misappropriated the café. The applicants, however, contend that it was a failed business venture giving rise to civil liability, not a criminal offence.

7. At this stage, it is not proper for this Court to go into the disputed facts in detail. Whether the applicants had dishonest intention from the beginning or whether it was merely a failed partnership is a matter of evidence. The allegation of misappropriation of funds and cheating will have to be tested at trial.

8. The fact remains that the dispute arises out of a business transaction. The informant and her husband voluntarily invested money with the understanding of sharing profits. The café was started and run for some time. The allegations of breach of trust and cheating are closely linked with the failure of the business. Prima facie, the matter appears to be in the nature of a commercial dispute, and not one where custodial interrogation of the applicants is necessary.

9. The applicants are permanent residents. There is no material to show that they may abscond or tamper with the evidence. The trial will take its own time. Keeping the applicants in custody in such circumstances would not serve any useful purpose.

10. Considering the nature of allegations, the period of investigation already undertaken, and the fact that the dispute is essentially of civil nature, I am of the view that this is a fit case to grant bail to the applicants, subject to conditions.

11. Hence, the following order:

(i) The bail application is allowed.

(ii) The applicants be released on regular bail in connection with Crime Register No.317 of 2024 registered with Kharghar Police Station for offences under Sections 420, 406, 504, and 506 of the IPC, on executing personal bonds of Rs.50,000 each with one or more sureties in the like amount.

(iii) The applicants shall attend the concerned Police Station once in a month till filing of the charge-sheet.

(iv) The applicants shall not directly or indirectly threaten, induce, or promise any person acquainted with the facts of the case.

(v) The applicants shall not leave India without prior permission of the Trial Court.

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

13. All pending interim applications stand disposed of accordingly.

(AMIT BORKAR, J.)