

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 3592 OF 2024

Parbez Athar Khan

.Applicant

vs.

The State of Maharashtra

.Respondent

Mr. S. K. Ali a/w. Ms. Shabi Fatma i/b. Mr. Asif Shaikh, Advocates, for the Applicant

Ms. Mahalaxmi Ganapathy, APP, for the Respondent – State

Mr. Vikramsingh Patil, API, L T Marg Police Station, Mumbai present

CORAM : MILIND N. JADHAV, J.

DATE : 06.01.2025

P. C.

1. Heard Mr. Ali, learned Advocate for the Applicant and Ms. Ganapathy, learned APP for the Respondent – State.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C.R. No. 0868 of 2024 registered with the L T Marg Police Station, Mumbai, for the alleged offences punishable under Sections 140(2), 140(3), 115(2), 118(1), 189(2), 189(4) & 3(5) of the Bharatiya Nyaya Sanhita, 2023.

3. Briefly stated the case of the prosecution is that the Complainant – Yakin Ali Saver Ali was working in the shop of Shivshankar Giri who was indulging in the business of selling mobile phones and covers and also simultaneously doing business of money transfer. In that view of

the matter, he was asked to open his current account and he agreed to do so for the purpose of carrying the said money transfer business. Accordingly, in the year 2020, he provided his details like Aadhar Card, Pan Card and photo for opening current account and it was opened in the name of the Complainant - Yakin Ali Saver Ali with the nomenclature "Rapi Pay Infotecks Private Limited". This account was used by one Mr. Nazimbhai Tarafdar who was working in the shop of Shivshankar Giri for the purpose of transferring money with the help of the present Applicant namely Parbez Athar Khan along with his two other accomplices namely Badrul Khan and Jafrul khan. These five persons i. e. the Applicant, Nazimbhai and three Accused started the business of money transfer. They obtained sim card in the name of Complainant and used the same. Thereafter, some time in October, 2022, Nazimbhai who was primarily instrumental in conducting the aforesaid money transfer business, retired and left for Kolkata.

4. It is the case of prosecution that when Nazimbhai left for Kolkata, he informed the Applicant and his two accomplices to close the current account of "Rapi Pay Infotecks Private Limited" which was opened in the name of Complainant. It is Complainant's own case that even thereafter, Complainant allowed the account to be used in his name and received a sum of Rs. 10,000/- per month from Applicant

and his accomplices for three months i. e. from January to March, 2023. Thereafter, the Complainant left the work in the shop of Shivshankar Giri and was looking for work elsewhere. The Complainant got employment in another shop and therefore, he requested the Applicant and his two accomplices to close his current account which was used by them in his name. It is the prosecution case that since Applicant did not agree, Complainant called him to meet on 26.10.2024. This was in view of the fact that on 17.10.2024, the Applicant had already informed the Complainant that they had received a statutory notice from the Bangalore police under Section 41(A) of the Code of Criminal Procedure, 1973 to carry out investigation relating to cheating and deceiving of ten persons using the account and identity of “Rapi Pay Infotecks Private Limited”. In that regard, initially the Complainant met the Applicant on 26.10.2024 at Pophalwadi, Kalbadevi from where the Complainant along with the Applicant on his motor cycle proceeded to Bismillah Hotel, Dongri. From Bismillah Hotel, after some time, the Applicant, the Complainant and his two accomplices proceeded to Vinoba Bhave Nagar, Kurla in a taxi. The allegation of the Complainant is that while proceeding in the taxi, he was assaulted with fist and kick blows and inside the taxi at that time, he received a phone call from his wife and he informed her

that he has been kidnapped by the Applicant and his two accomplices. It appears from the prosecution case that his wife immediately informed the Vinoba Bhave Nagar Police Station, Kurla and one of the occupant of the taxi received a phone call from the Vinoba Bhave Nagar Police Station at Kurla informing them to come to the Police Station at Kurla and accordingly, the taxi reached the Police Station at Kurla. On the above facts seen from the record, *Prima facie*, case of kidnapping is not made out. None of the ingredients of kidnapping are seen. Nor it is the case of the Complainant that he was forcefully induced by the Complainant to accompany him from Kalbadevi to Dongri on the motor cycle and thereafter to Kurla in the taxi. Rather, it is *prima facie* seen that the Complainant went along with Applicant on his own volition. I am not inclined to accept the prosecution case solely due to the fact that when the phone call was received from the Vinoba Bhave Nagar Police Station, Kurla, the occupants of the taxi including the Complainant immediately reached the Police Station at Kurla. Hence, on the basis of the aforesaid events, arguments and considering the nature of allegations, the Applicant deserves to be granted pre-arrest bail on the following terms and conditions :

O R D E R

- (i) In the event of the arrest, the Applicant be enlarged on bail on

furnishing P .R. Bond in the sum of Rs. 30,000/- with one or two solvent sureties in the like amount;

(ii) The Applicant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case;

(iii) The Applicant shall attend the Police Station on the first Monday of every month between 10.00 a. m. and 12.00 noon or as and when called for by the investigating officer until the Charge-sheet is filed and thereafter as and when called for by the investigating officer;

(iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

5. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

6. All concerned to act on the authenticated copy of this order.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

(MILIND N. JADHAV, J.)