IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 286 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 3070 OF 2023

Sanket Subhash Sawant ...Applicant
In the matter between
Alok Ranjan ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Manoj Kumar Tiwari, a/w Sejal Nalawde and Pratik Malogi, for the Applicant.
Mr. A. A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 18th FEBRUARY, 2025

ORDER:-

1. The applicant - first informant has preferred this application seeking permission to withdraw the amount of Rs.18,17,050/- deposited by the applicant in ABA/3070/2023 in this Court, pursuant to the order passed by this Court on 6th November, 2023.

2. The first informant lodged a report with the allegations that the accused - the applicant in ABA/3070/2023 had allegedly induced him to part with an amount of Rs.18,17,050/- by making a false representation that he would procure/import the medicines from Tajikistan. The accused had allegedly given

9 certificates to show that the medicines required by the first informant were registered with Tajikistan authorities. Pursuant to the said report, crime was registered at CR No.353 of 2022 at Nagpada Police Station for the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 ("the Penal Code").

3. Apprehending arrest the accused approached this Court by filing application for pre-arrest bail. On 6th November, 2023 this Court was persuaded to grant interim bail to the accused observing, *inter alia,* as under:

> "4. The learned counsel for the applicant submitted that the applicant is willing to deposit a sum of Rs. 18,17,050/- over the receipt of which there is no dispute. However, there is no material to show that the applicant had allegedly forged the certificates.
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> 5. Mr. Manoj Tiwari, the learned counsel submits that he has instruction to appear on behalf of the first informant. He submits that if the applicant is willing to deposit the amount of Rs.18,17,050/-, he has no objection to grant interim protection.
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> 6. Prima facie, it appears that the transaction is one of failure to provide the services which were promised by the applicant. Whether the intention of the applicant was dishonest since inception of the transaction is a matter for consideration. As the applicant has shown willingness to deposit the amount of Rs.18,17,050/- and the first informant is not averse to the said proposition, I am inclined to grant interim protection.
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> 7. As undertaken, the applicant shall deposit the amount of Rs.18,17,050/- in this Court by 30th November, 2023."

4. By a further order dated 18th December, 2023, the aforesaid order of interim bail was made absolute.

5. The first informant has preferred this application asserting that the accused had volunteered to deposit the said amount of Rs.18,17,050/- and, therefore, the first informant be permitted to withdraw the same.

6. The accused resisted the application by filing an affidavit-in-reply. It was, *inter alia,* contended that the transaction between the parties was of civil nature and the first informant, in his endeavour to extract money from the accused, lodged a false FIR by giving a criminal flavour to the civil transaction between the parties. In these circumstances, the accused was constrained to deposit the said amount. However, the entitlement of the first informant to the said amount is a matter for adjudication. Therefore, the said amount may not be permitted to be withdrawn.

7. Initially, the parties made an endeavour to amicably resolve the dispute. Since the negotiations did not materialize, the mater was heard.

8. The learned Counsel for the first informant submitted that the fact that the amount of Rs.18,17,050/- was paid by the first informant to the accused is indisputable. In fact, during the course of investigation the accused had not only acknowledged the receipt of the said amount but also volunteered to pay the same. The first informant had given his no objection to the grant of interim bail as the accused had shown willingness to deposit the said amount in this Court. Attention of the Court was invited to the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed thereto.

9. In opposition to this, the learned Counsel for the accused, would submit that the liability of the accused to repay the said amount is disputed. There were commercial transactions between the parties. The transaction failed as the first informant tried to directly deal with the suppliers of the accused. Since the prosecution has been initiated to bring the accused to terms and agree to pay an exorbitant amount, to show his *bona fide* the accused has deposited the said amount of Rs.18,17,050/-. That, according to the learned Counsel for the accused, does not constitute an admission of the liability.

10. To being with, it is necessary to note that being conscious of the position in law that payment of the amount allegedly involved in the crime cannot be a condition for the grant of pre-arrest or regular bail, while granting interim bail by order dated 6th November, 2023, in addition to recording the willingness of the accused to deposit the amount of Rs.18,17,050/-, this Court had explicitly noted that *prima facie* it appeared that the transaction was one of failure to provide the services which were promised by the applicant. And whether the intent of the applicant was dishonest since the inception of the transaction, was a matter for consideration. Likewise, while confirming the order of interim bail, this Court further noted that the major offence under Section 420 of the Penal Code entailed punishment which may extend to seven years. And, therefore, the discretion could be better exercised in favour of the accused. Consequently, it cannot be urged that the accused was granted pre-arrest bail only for the reason that the accused had volunteered to deposit the amount of Rs.18,17,050/-.

11. In a series of decisions, which were adverted to by the Supreme Court in the case of ***Ramesh Kumar vs. State of NCT Delhi***[1]**,** the Supreme Court has disapproved the imposition of a condition of payment or deposit of the amount in Court for securing the release on bail. Inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail. (***Ramesh Kumar*** (supra)).

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1 (2023)7 SCC 461.

12. In the case of ***Shane George Dsouza vs. State of NCT of Delhi***[2]***,*** the Supreme Court again disapproved the direction to deposit the amount, and permitting the release of the amount to the victim. Paragraph 4 of the said order reads as under:

> "4. This Court has repeatedly held that the condition of deposit of such amount cannot be a condition of bail. In this case, the appellant had not volunteered to deposit the sum of Rs.10,00,000/- (Rupees ten lakhs). The direction in the order dated 18th January, 2023 is not only of imposing a condition on the appellant of bringing a sum of Rs.10,00,000/- (Rupees ten lakhs) to the Trial Court but a permission has been granted to release the amount to the victim. It is a settled law that criminal proceedings cannot be converted into recovery proceedings."

13. The aforesaid pronouncements, if construed in a correct perspective, bear upon the tenability of application for refund of the amount deposited by an accused, even voluntarily. Permission to the first informant/victim to withdraw the amount deposited by the accused would indirectly lead to the same result as the said course may amount to the Court facilitating recovery of the amount allegedly due to the first informant/victim by the accused. Undoubtedly, there is material to show that the amount of Rs.18,17,050/- was paid by the applicant – first informant to the accused. However, in the light of the dispute raised by the accused, the entitlement of the first informant to recover the said amount would be required to be

2 2023 SCC OnLine SC 1940.

adjudicated in an appropriate proceeding. A direction with regard to the disposal of the amount deposited by the accused can be legitimately given at the conclusion of the trial. Thus, the prayer in the instant application cannot be countenanced at this stage.

14. Hence, the following order:

: O R D E R :

(i) The application stands rejected.

(ii) The amount of Rs.18,17,050/-, alongwith the interest accrued thereon, be transferred to the Court of the Magistrate exercising jurisdiction over Nagpada Police Station.

(iii) The learned Magistrate shall, in turn, invest the amount in an interest bearing account. The said amount shall abide the outcome of Criminal Case No.15/PW/2024 arising out of CR No.353 of 2022.

(iv) Application disposed.

[N. J. JAMADAR, J.]