Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 754 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 2681 OF 2019

Siddeek Ahmed Haji Panamtharayil .. Applicant (De-facto Complainant)

Versus

State of Maharashtra and Anr. .. Respondents

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- Mr. Sarthak Rai, Advocate i/by Mr. Deepak Prakash for Applicant.
- Dr. Ashvini A. Takalkar, AGP for Respondent No.1 – State.
- Mr. Atul Joshi, Advocate for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.
DATE : JULY 18, 2025.

P.C.:

1. Heard Mr. Rai, learned Advocate for Applicant; Dr. Takalkar, learned AGP for Respondent No.1 – State and Mr. Joshi, learned Advocate for Respondent No.2.

2. This Interim Application is filed by the Applicant – Original Complainant for cancellation of Anticipatory Bail Application granted by this Court to Respondent No.2 vide order dated 01.04.2022 in connection with C.R. No.166 of 2019 registered with Vanrai Police Station, Goregaon (West), Mumbai for offences punishable under Sections 420, 406 read with 34 of the Indian Penal Code, 1860 (for short "**IPC**") registered on 25.07.2019. The impugned order dated 01.04.2022 is appended at Annexure 'B' - page No.19 of the

Application. To appreciate and adjudicate the present Application, it would be necessary to consider the brief facts relevant for adjudication which are in a narrow compass.

2.1. Respondent No.2 is the accused person. According to Applicant – First Informant, he deposited Rs.4 crores with Respondent No.2 as an Investor where as according to Respondent No.2 – Accused, the said amount was received by him as advance for placement of order of ready-made clothes by First – Informant. There is no denial from Respondent No.2 - Accused that the amount of Rs.4 crores was received by him from First – Informant.

2.2. Respondent No.2 – Accused is the Director of Company called "M/s. Al-rkayan Apparels and Exports Pvt. Ltd." (for short "**the said Company**"). When First – Informant sought return of his amount of Rs.4 crores, Accused promised to return it to him. Both parties had a joint meeting on 29.12.2017 which is not denied by Accused. Minutes of Meeting were drawn of the said meeting wherein it was agreed by Accused that the said Company was not in a position to repay back the full amount to Applicant and the Directors of the Company therefore offered to pay to him an amount of Rs.3 crores and 20 lakhs in one single installment before June 2018, alongwith personal guarantee from one of the nominated Directors by the board of Directors of the said Company in favour of Applicant until full and final settlement of the said amount.

2.3. As per Minutes of Meeting it was agreed that if the single installment was not paid, the Directors would be liable to pay Rs.4 crores alongwith Bank interest (prevailing fixed deposit income rate) from July 2018 onwards until final settlement whichever was earlier. Record shows that since there was a fire in the factory of the Company and its business ran into losses and it was not in a position to return back the amount due to financial constraints and hence the Minutes of Meeting were prepared.

2.4. Sum and substance is that amount Rs.4 crores received by Accused is not denied. First Information Report (FIR) is filed and investigation undertaken, statements of witnesses and independent witnesses are recorded which affirm the above position. Accused person does not deny the above position.

2.5. Case of Respondent No.2 – Accused is that deposit of the said amount by Applicant was investment in the said Company. Respondent No.2 - Accused filed Anticipatory Bail Application No.1128 of 2019 before the learned Sessions Court, Dindoshi. By order dated 30.11.2019, Anticipatory Bail Application was rejected on merits.

3. Being aggrieved Respondent No.2 filed Anticipatory Bail Application No.2681 of 2019 in this Court. By the impugned order dated 01.04.2022, Anticipatory Bail Application was granted to

Respondent No.2 – Accused on the basis of a statement made on behalf of the Accused by his Advocate from 28.03.2022 (previous date of hearing) stated that he did not dispute his liability to pay the amount of Rs.4 crores to Applicant and due to a fire incident having occurred in August 2016 the financial condition of Respondent No.2's Company ran into rough weather due to which he could not pay the amount.

4. When that statement was recorded Accused agreed to file an Affidavit in the form of an Undertaking as to the manner in which he can satisfy the claim of the Applicant.

5. In that view of the matter when Anticipatory Bail Application No.2681 of 2019 was heard on 01.04.2022, the following order was passed by this Court (Coram: M.S. Karnik, J.):-

> *"1. This is an application for pre-arrest bail on behalf of the applicant in connection with C.R. No. 166 of 2019 registered with Vanrai Police Station, Goregaon (W), Mumbai, for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code registered on 25.07.2019.*
>
> *2. On 28.03.2022 the following order was passed :-*
>
> > *"1. Learned counsel for the applicant seeks time to file an affidavit in the form of an undertaking as to the manner in which the applicant can satisfy the claim of the respondent no.2-complainant. The applicant does not dispute his liability to pay the amount of Rs.4 crores to the respondent no.2. It is the contention of the applicant that as a result of the fire that broke out in August, 2016 that the financial condition of the applicant's establishment ran into rough weather.*
> >
> > *2. List the application on Thursday (**March 31, 2022**).*
> >
> > *3. Interim protection already in operation to continue till next date."*
>
> *3. Accordingly, an undertaking is filed on behalf of the applicant dated 30.03.2022 which is taken on record and*

marked as Exhibit 'X' for identification. In view of the undertaking, it is not necessary to refer to the facts of the case in detail. Suffice it to observe that the applicant admits his liability to pay a sum of Rs.4 Crores to the respondent no.2. It is the case of the applicant that on account of fire that broke out at the factory premises that the applicant ran into financial troubles. The insurance claims are pending and part of the insurance claim is released. The major liabilities are of the respondent no.3-Union Bank of India. Learned counsel for the respondent no.3 says that the Union Bank of India has first charge over the property and dues to be recovered.

4. The undertaking of Mr. Prabhakar Shama Shetty records thus :-

UNDERTAKING

> *I, Prabhakar Shama Shetty, the Applicant in the Anticipatory Bail Application No. 2681/2019, hereby state on solemn affirmation as under.*
>
> *1. I say that, I am also a Director and share holder of M/s. PREMIER LIGHTING INDUSTRIES PVTLTD. Company, along with Mr. Atul Desai and as per valuation report dated on 31 march 2018, market value of the land and building was 49.41 Crores and our said company is ready to repay all liabilities of M/s "AL-RKAYAN APPARELS AND EXPORTS PVT.LTD COMPANY, including the amount due towards the complainant M/s ERAM PROPERTY NETWORK PVT.LTD.*
>
> *2. I further say that due to fire incidence, our said company was and is facing financial crises and not in position to repay the bank or the complainant, hence to clear all the liabilities the applicant is ready to dispose of factory premises along with the machinery in open market and willing to repay all debts which will be totalling to approximately 45 crore.*
>
> *3. That the balance insurance claim of around 6.8 crores along with enhancement of claim is still pending with the Insurance Company, even the same may be used to clear the dues of the bank as well as the complainant.*
>
> *4. I undertake to repay the dues/amount of the complainant on first priority along with the Bank, and ready to execute MOU with the complainant to this regard.*
>
> *5. I further reiterate that I undertake to clear all the liabilities of complainant and the bank, on receipt of the consideration of the factory premises including the machinery, and balance Insurance claim amount.*
>
> *6. That I am ready and willing to repay, voluntarily, the balance amounts paid by the complainant, immediately on*

receipt of the consideration towards the properties of the company and balance insurance claim, subject to the grant of leave of this Hon'ble Court.

7. I say that I hereby undertake to repay as above to the complainant. HENCE THIS UNDERTAKING."

5. Learned counsel for the applicant on instructions undertakes that within a period of eight months from today the liabilities towards the bank and the complainant will be cleared by the applicant upon disposing of the property. Learned counsel for the applicant on instructions undertakes to abide by the conditions mentioned in the undertaking. The undertaking is accepted.

6. Learned counsel for the respondent no.2/first informant on instructions submits that the respondent no.2 is interested in getting back its rightful dues and is presently satisfied with the undertaking as the applicant has agreed to abide by the undertakings and repay their debts within a period of eight months from today. Learned counsel for the First Informant therefore does have an objection to the following order being passed. Hence, the following order :-

O R D E R

(i) The interim order dated 14.01.2020 passed by this Court is confirmed.

(ii) In the event of the arrest of the applicant in connection with C.R. No.166 of 2019 registered with Vanrai Police Station, Goregaon (W), Mumbai, the applicant shall be released on bail on furnishing a bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant shall co-operate with the investigation and report to the Investigating Officer as and when called.

(iv) The statement of learned counsel on behalf of the applicant on instructions that the applicant will abide by the terms mentioned in the undertaking within a period of eight months from today is accepted.

(v) The passport of the applicant which is already deposited with the Investigating Officer shall remain so deposited subject to further orders that may be passed by the trial Court.

7. The Anticipatory Bail Application is disposed of."

6. Thus it is seen that Respondent No.2 - Accused filed a written Undertaking dated 30.03.2022 admitting his liability to pay

Rs.4 crores to the Applicant from the insurance claims which were pending and once the insurance claim is released subject to the liability / claim of Union Bank of India having first charge over the property and dues of the said Company / factory premises. It is seen that in paragraph No.4 undertaking of Respondent No.2 - Accused is also recorded admitting the liability and undertaking to pay the same on first priority alongwith the Bank.

7. This Court in view of the said Undertaking granted Anticipatory Bail Application and recorded his statement that he shall abide by the terms of the Undertaking and make the payment of Rs.4 crores within a period of 8 months from the date of the order.

8. Mr. Rai, learned Advocate for Applicant (De-facto Complainant) would submit that Respondent No.2 - Accused has not adhered to the conditional order passed on 01.04.2022 granting him Anticipatory Bail Application and has not paid a single farthing to the Applicant / First – Informant. He would submit that Respondent No.2 - Accused filed a false Undertaking promising to pay the amount of Rs.4 crores within 8 months merely to obtain Anticipatory Bail with no intention whatsoever to pay the said amount as he has not shown his bonafides.

8.1. He would submit that when the Sessions Court dismissed his Anticipatory Bail Application, it categorically observed that Respondent

No.2 - Accused was withholding the amount of Rs.4 crores but not disclosing the same and therefore his custodial investigation was required and therefore rejected his Application.

8.2. He would submit that in paragraph No.5 of the Undertaking Accused has given a solemn promise that he will dispose the property and clear the liability which was the reason for grant of Anticipatory Bail to Respondent No.2 - Accused by this Court. He would submit that the condition agreed by Respondent No.2 - Accused is breached by him by making a false narrative to the Court that he will pay the amount after disposal of the property of the Company within 8 months which he knew that he will not be able to dispose due to several reasons which he suppressed from the Court.

8.3. He would submit that conduct of Applicant is such that he has willfully breached the solemn Undertaking given to the Court which has been acted upon by the Court but in reciprocation Accused has breached the condition by making false and misleading statements.

8.4. He would submit that in the present Application, Accused has now come up with a completely new story and defense about NCLT proceedings against the said Company stating that in view of the moratorium imposed by NCLT proceedings Respondent No.2 – Accused is not in a position to return the said amount until the NCLT proceedings are over and in the alternate has asked the Applicant to register his claim with Official Liquidator.

8.5. He would submit that once the solemn Undertaking is breached by Respondent No.2 – Accused on the basis of which he has procured Anticipatory Bail, that too by misleading the Court then Respondent No.2 - Accused needs to oblige by the same since otherwise it would amount to misuse of the Anticipatory Bail order secured by him through false promises given to the Court. He would submit that when the Undertaking was given, the same was never contingent upon any NCLT proceedings or Corporate Resolution Plan or the outcome of the NCLT proceedings which is now pleaded as a defence.

8.6. He would submit that by making an offer of making the payment before the Court, Respondent No.2 - Accused invited a favourable order and induced the Court to grant bail and on his assurance the Court granted him Anticipatory Bail which he has now enjoyed defiantly for more than 3 years 3 months rather he has enjoyed Anticipatory Bail since 2020 onwards. He would submit that the basis for grant of Anticipatory Bail to Respondent No.2 – Accused, in the present case was the assurance given by him in the nature of written Undertaking that is reproduced in the order.

8.7. Hence he would submit that now Respondent No.2 - Accused cannot be heard to say that he should not be made to face the consequences of his failure to abide and honour his own Undertaking since the same was made on his own volition.

8.8. In support of his submissions the Applicant has referred to and relied upon the following decisions / citations:-

(i) ***Satish P. Bhatt Vs. State of Maharashtra***[1];

(ii) ***Satish P. Bhatt Vs. State of Maharashtra***[2];

(iii) ***Mahesh Thakkar @ Mahes Manubhai Gadhai Vs. The State of Maharashtra and Anr.***[3];

(iv) ***Dinesh Prasad Mandal Vs. State of Jharkhand and Anr.***[4];

(v) ***X. Vs. State of Telangana and Anr.***[5];

(vi) ***Biman Chatterjee Vs. Sanchita Chatterjee and Anr.***[6]; and

(vii) ***Kundan Singh Vs. The Superintendent of CGST and Central Excise***[7].

9. ***PER CONTRA***, Mr. Joshi, learned Advocate for Respondent No.2 – Accused would oppose the present Interim Application filed for cancellation of bail and make the following submissions:-

9.1. He would submit that the dispute primarily concerns the said Company. He would submit that FIR has been lodged by one Mr. Azim Sharif Mohammad Ismail without any proper documentation/ authority such as letter of authorization, Power of Attorney, or Board Resolution.

1 2019 SCC OnLine Bom 13373
2 2024 SCC OnLine SC 16
3 Criminal Application No.106 of 2011 – Decided on 10.08.2011.
4 2025 SCC OnLine Jhar 1378
5 (2018) 16 SCC 511
6 (2004) 3 SCC 388
7 SLP (Crl.) No.9111 of 2025 – Decided on 23.06.2025.

9.2. He would submit that in the year 2020, ad-interim relief was granted in the Anticipatory Bail Application in favour of Respondent No.2 – Accused which was subsequently confirmed by order dated 01.04.2022. Pursuant to which Respondent No.2 – Accused voluntarily filed an Undertaking accepting his liability to repay the amount which was not specifically stated in the Clause 4 of the Undertaking.

9.3. He would submit that in the year 2015, Azim Sharif Mohammad Ismail passed a Resolution, agreeing to execute the MOU however he failed to furnish POA in his favour, despite repeated reminders thereby stalling the execution of the MOU. Hence he would submit that Applicant's lack of co-operation and due to subsequent NCLT proceedings the MOU could not be finalized. He would submit that Respondent No.2 – Accused has admitted his liability and has made efforts in compliance of the same.

9.4. He would submit that Applicant has misused the criminal process for recovery of a civil liability through the Undertaking given by Respondent No.2 - Accused. He would submit that Respondent No.2 – Accused has made persistent efforts to fulfill the Undertaking as per the 2015 Resolution submitted before the NCLT.

9.5. He would submit that the Applicant has filed the present Interim Application without proper documentation. He would submit that Respondent No.2 – Accused disclosed the amount with interest as per the Undertaking and the Advocate for Applicant also undertook to co-operate with Respondent No.2 – Accused in the proceedings before the NCLT despite which the present Application is pressed.

9.6. He would submit that if at all Applicant's case is accepted then it is pertinent to note that Applicant could have filed his claim before the NCLT which is the appropriate forum, despite knowing the fact that Respondent No.2 – Accused person's bank accounts and assets are already frozen.

9.7. He would submit that seeking recovery of the alleged amount from Respondent No.2 – Accused by relying on a bail order is untenable. He would submit that it is settled law that criminal proceedings cannot be used to recover civil dues and Courts exercising jurisdiction to grant bail/pre-arrest bail cannot act as recovery agents for realization of dues of the complainant from the accused. Hence he would submit that the present Application is an abuse of the process of law and therefore deserves to be dismissed.

9.8. In support of his aforesaid submissions he has referred to and relied upon the following decisions / citations:-

(i) ***Apruva Kirti Mehta Vs. The State of Maharashtra***[8];

(ii) ***Ramesh Kumar Vs. State of NCT of Delh***i[9];

(iii) ***Shane George Dsouza Vs. State of NCT of Delhi***[10];

8 Criminal SLP [Arising out of SLP (Crl.) No.15402-15403 of 2024]

9 (2023) 7 SCC 461

10 Criminal Appeal No.3080 of 2023 [Arising out of SLP (Crl.) No.4016 of 2023] – Decided on 04.10.2023.

(iv) ***Manoj Kumar Bathla Vs. State of U.P.***[11]; and

(v) ***P. Mohanraj Vs. M/s. Shah Brothers Ispat Pvt. Ltd.***[12].

10. I have heard the rival submissions made by learned Advocates at the bar and with their able assistance perused the record of the case. Submissions made by them have received due consideration of the Court.

11. At the outset, it is seen that there is no dispute on the basic facts of the case. Respondent No.2 – Accused has agreed that he furnished the Undertaking on the basis of which Anticipatory Bail was granted. But according to him pursuant thereto due to the Insolvency and Bankruptcy Code, 2016 (for short '**IBC**') proceedings being filed against the Company in NCLT and the moratorium being imposed it amounted to change in circumstances and the said undertaking could not be complied with.

12. Record shows that Company Petition (I.B.) No. 390/MB/2023 is filed on 15.04.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority Rules, 2016) by Millennium Enterprise (Operational Creditor) to initiate corporate insolvency resolution process against Al-rakyan Apparels and Exports Pvt. Ltd. (Corporate Debtor) for committing default in payment of an

11 Anticipatory Bail Application No.3099 of 2023 – Decided on 24.04.2023.

12 AIR 2021 SC 1308

Operation Debt of Rs. 1,65,24,002 crores to the Creditor before the NCLT – Mumbai Bench V. By order dated 05.12.2023 the Petition is admitted and CIRP is ordered against the said Company and Interim Resoultion Professional has been appointed.

13. Mr. Joshi, learned Advocate for Respondent has vehemently argued that in view of this position Respondent No.2 - Accused is unable to honour his commitment as in the Undertaking it is stated that the said Company's factory premises alongwith machinery shall be disposed of for effecting the dues to the Applicant and the Bank and further stating that Applicant was his first priority. He has drawn my attention to order dated 09.04.2025 of this Court which recorded that after hearing both parties wherein it was requested by him that directions be given to Applicant to co-operate with Respondent No.2 - Accused before the NCLT as he has every intention to pay the amount as per the Undertaking.

14. It is seen that by operation of law and NCLT proceedings filed subsequent to the grant of Anticipatory Bail order, the Respondent No.2 - Accused is now unable to honour his commitment. Hence whether in the light of the aforesaid facts, can it be said that Respondent No.2 - Accused has breached the undertaking and renegade his promise to pay the amount is the issue to be decided by me to determine the present Application.

15. It is seen that the NCLT order appended at page No. 87 to 93 of the Application is passed much after the passing of the Bail order dated 01.04.2022, rather the Company Petition against the said Company was itself filed on 15.04.2023 which is much after passing of the order dated 01.04.2022. Ideally, if the said Undertaking is seen then the money ought to have been paid within 8 months from April, 2022 that is by December, 2022 but the same was not paid by Respondent No.2 - Accused. The Interim Application which is filed for cancellation of Anticipatory Bail is filed on 01.02.2024 by which time the NCLT order dated 05.12.2023 was already in place, whereby in view of the moratorium the Respondent No.2 - Accused was completely handicapped in arranging the monies to pay the amount as per the Undertaking. Even the Applicant did not approach the Court immediately after completion of 8 month period for seeking cancellation of Anticipatory Bail which was well before the passing of the NCLT order on 05.12.2023. The Applicant filed this Application on 01.02.2024.

16. Thus considering the aforementioned facts and the citations relied upon by the parties across the bar, in the aforementioned peculiar facts of the Respondent No.2 – Accused's case delineated and discussed hereinabove I am of the *prima facie* opinion that in view of the subsequent change in circumstances namely the order dated 05.12.2023 passed by the NCLT and initiation of CIRP is the reason as to why Respondent No.2 - Accused cannot now pay the amount of Rs.4 crores as per the undertaking. Record shows that he is prosecuting the proceeding before the NCLT.

17. That apart the case of Applicant is also refuted by the Respondent No.2 - Accused in view of certain developments which had taken place prior in point of time in the year 2015-2016 itself when both parties had resolved that they will enter into a Memorandum of Understanding whereby Al-rakyan Apparels and Exports Pvt. Ltd. will be taken over by the Applicant. Subsequently, the said Memorandum of Understanding was not executed and did not fructify due to lack of Power of Attorney by Mr. Azim Sharif Mohammad Ismail which is borne out from the record.

18. In view of the above observations and findings emanating from the record, I am not inclined to accept the submissions made by the learned Advocate for Applicant that present case of Respondent No.2 - Accused will have to be treated as a case of non-fulfillment of a promised condition for cancellation of his bail strictly relying upon the order passed in the case of ***Satish P. Bhatt*** *(1st supra)* and upheld by the Supreme Court solely because of the peculiar facts in the present case discussed above. The question of evasion of the condition in my opinion in the present case does not arise because of the moratorium imposed and CIRP proceedings initiated by the NCLT under the IBC against Respondent No.2 – Accused person's Company. These supervening circumstances discussed hereinabove in my opinion clearly distinguish this case on a different footing than the facts of the case in ***Satish P. Bhatt*** *(1st supra)* which come to the aid of the Respondent No.2 – Accused. Hence, the proposition that cancellation of bail solely on the ground of non-fulfillment of promise made to the Court cannot in my opinion apply to the facts of the present case.

19. It is true that Anticipatory Bail is secured by virtue of the Undertaking recorded by the Court but to argue that the said Undertaking is breached by the Respondent No.2 – Accused cannot be consider in view of the supervening circumstances whereby the Respondent No.2 – Accused is prevented from complying with the Undertaking due to operation of law. Hence this cannot be termed as failure and breach of the undertaking *per se*.

20. In view of my aforesaid observations and findings the Interim Application No.754 of 2024 is dismissed.

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[MILIND N. JADHAV, J.]

AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.07.18 12:01:30 +0530