IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.319/2025

SALIM KASSAM VALLA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

WITH
ANTICIPATORY BAIL APPLICATION NO. 320/2025

KAUSAR SALIM VALLA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Adv. Amina Momin a/w. Adv. Anjum Shaikh for the applicants.
Mr. Mayur S. Sonavane, APP for State.
Mr. Patil, API, Kashimira Police Station.

CORAM : RAJESH S. PATIL, J.

DATE : FEBRUARY 4, 2025.

P.C. :

1. These are applications for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in respect of the C.R. No. 698/2022 registered with Kashimira Police Station, Mira-Bhayandar for the offence punishable under Sections 406, 420 read with 34 of the Indian Penal Code.

2. The applicant in Anticipatory Bail Application No.319/2025 is the husband of the applicant in Anticipatory Bail Application No.320/2025. The applicant in Anticipatory Bail Application No. 319/2025 is accused no.1 and applicant no.2 in Anticipatory Bail Application No.320/2025 is accused no.6 as arrayed in the First Information Report (FIR). Total there are seven accused out of which accused no.2 and accused no.4 are absconding. Accused no.3 was arrested and has died thereafter. Accused no.5 is in jail for some another offence. As far as accused no.7 is concerned, the charge-sheet is already filed against her.

3. It is the case of the prosecution that all the accused persons are involved in the business of selling flats/shops in the locality of Mira Road. They had offered the informant a shop to be sold in the building 'Celesta' for a consideration amount of Rs.1,01,00,000/-. Admittedly, the informant has paid a sum of Rs.41,40,000/- by cheque from his account and the account of his close relatives. Additionally, according to the informant, he has paid a sum of Rs.56,60,000/- in cash. Hence, according to the informant, total Rs.98 lakhs has been paid. Despite the payment of a huge amount of Rs. 98 lakhs, possession of the said shop has not been given to the informant. Subseqeuntly, cheques were handed over to the informant for the return of the amount paid, but they were dishonoured upon presentation. Hence, the informant has lodged the FIR.

4. It is the case of the applicants that they have no role to play in the entire transaction. Since accused no.1 was into the business of real estate and also working as accountant with accused no.4, there were various transactions between accused no.1 and accused no.4 pursuant to which certain monies were transferred from accused no.4 to accused no.1. However, the monies so transferred had no connection with the dealing of the informant. It is further submitted that the present applicants have always cooperated with the police. There is a delay in filing the FIR which is unexplained and that the names of the applicants did not surface initially. Only as an afterthought accused no.1 and accused no.6 have been dragged into the offence. The applicants are ready to cooperate with the investigation and the custody of the applicants are not required.

5. The learned APP appearing for the State submits that inspite of issuing notices under Section 41A of the Code of Criminal Procedure, they have refused to cooperate with the investigation. Even after that the applicants were called upon by the police for recording their statements at last on 29th December 2023, however, the applicants did not report to the concerned police station. In the FIR and the statements recorded, the role of the present applicants have been specifically mentioned. Immediately, after informant paying monies to accused no.3, the said accused no.4 transferred amounts to accused no.1 and accused no.6. Therefore, the custody of the applicants is required to disclose how the money transaction took place. Hence, according to the learned APP, there is no merit in the present application and the same should be rejected.

6. There is no denial that accused no.1 is in the business of real estate. The FIR specifically mentions that the applicants were present in the office of the builder/developer when the informant had gone to the builder's office in order to purchase the shop for himself. The informant deposited the amounts by cheque and cash. As per the applicants, the amounts have been paid by the informant to accused no.4, who has been absconding from the month of October 2019. Total amount of Rs.41,40,000/- by cheque was paid to accused no.4 from 4th October 2019 to 17th October 2019. It appears that from 4th October 2019 to 16th October 2019, a sum of Rs.16,50,000/- have been transferred in the account of accused no.1 and 6 from the account of accused no.4. It will be necessary to find out what exact is the dealing between accused no.1, accused no.4 and accused no.6.

7. The learned counsel for the applicants has relied upon the three orders passed by the Hon'ble Supreme Court in the case of *(1) Aman Preet Singh vs. C.B.I. through Director (Criminal Appeal No.929/2021 arising out of SLP (Crl.) No. 5234/2021), (2) Siddharth vs. The State of Uttar Pradesh & Anr. (Criminal Appeal No.838/2021 arising out of SLP (Crl.) No. 5442/2021)* and *(3) Musheer Alam vs. The State of Uttar Pradesh & Anr. (Petition for Special Leave to Appeal (Crl.) No.18081/2024)*. In *Aman Preet Singh* (supra), the accused cooperated with the investigation. Therefore, the facts in both the proceedings are different than the present proceedings. In *Musheer Alam* (supra), while the investigation was in progress, the investigating officer did not feel proper to arrest the petitioner therein. In *Siddharth* (supra), the investigating officer believed that the accused will not abscond or disobey the summons. Hence, the custody was not required. Therefore, the said orders passed by the Hon'ble Supreme Court does not support the case of the present applicants.

8. The fact remains that the present applicants who are accused nos.1 and 6 are not cooperated with the police. Inspite of the notices being sent to them to remain present for recording their statements, they have avoided going to the police station. It seems that they are not ready to cooperate with the police, therefore, no case is made out to grant anticipatory bail to both the applicants. The fact remains that the informant paid monies by cheque and by cash being consideration of shop. The shop has not been handed over to him, neither the monies have been returned to him. The cheques, given to him as per the statement made by the present applicants for the sum of Rs. 20 lakhs, have also been dishonoured. Therefore, no case is made to grant anticipatory bail to the present applicants. **The applications are, therefore, rejected**.

(RAJESH S. PATIL, J.)