IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.684/2025

NISHUN RADHESHYAM PATEL ...APPLICANT
VS
THE STATE OF MAHARASHTRA ...RESPONDENT

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Adv. Kishore Patil a/w Dinesh R. Shinde for the Applicant.
Adv. Supriay Kak, APP for the Respondent State.
Abhishek Ynde a/w Heanike Vyas i/b Yende legal Associates.
PSI Dipak Kadhav, Koregaon Park Police Statioin.

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CORAM : RAJESH S. PATIL, J.
DATED : APRIL 8, 2025

P.C.:

1. This anticipatory bail application has been filed in FIR No. 0185/2024 registered with Koregaon Park Police Station, Pune City, under Sections 351(2), 318(4), 316(2) and 3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. It is the case of the prosecution that the accused no.1 induced the first informant for purchasing one acre of land for farm house at Lonavala for the cost of Rs.70,00,000/-. The first informant accordingly in between March 2023 to June 2023 paid a sum of Rs.70,00,000/- to the accused no.1.

3. Subsequently, the said accused no.1 also informed that he also deals in share market and Bit Coin trading and that the informant

can invest in the said business. Believing the accused no.1, the informant further paid a sum of Rs.35,00,000/- to the accused no.1. The accused no.1 thereafter refunded a sum of Rs.1,00,000/- to the informant. After that, the informant and his wife again invested a sum of Rs.7,50,000/- with the accused no.1. Hence, the informant paid a total sum of Rs.1,12,50,000/-to the accused no.1. The informant also handed over his vehicle bearing No. MH-12-SV-5014 to the accused no.1. The said vehicle has also not been returned back. It has been further stated that the present applicant who is arrayed as accused no. 1, his mother is accused no. 2 and accused no.3 is his neighbor. The accused no. 2 mother and accused no.3 neighbor was granted pre-arrest bail due to their age and since there was no antecedents and they were ready to co-operate.

4. It is also further stated that the accused no.1 has cheated one person by name Francis Kalus Bareto, to the tune of Rs.2,01,25,000/- assuring him to develop software for school management. Hence, the present FIR has been lodged.

5. The learned counsel for the applicant submitted that the applicant is ready to co-operate with the police for investigation. He submits that to show his bonafides, the applicant has filed an affidavit cum undertaking dated 24 March, 2025. By the said affidavit cum undertaking, the applicant has intended to pay a sum of Rs. 82,50,000/-

and the first installment of the said payment will start from 15 June, 2025 of Rs.5,00,000/- and thereafter, the second installment will start from 15 January, 2026 of Rs.2,50,000/- per month and the entire payment would be completed by June, 2028. The applicant had in good faith, assured the first informant that their monies would be invested in the share market and they will give good returns. However, due to down fall in the share market, the monies were not returned as huge losses has been suffered by the applicant. The details of the bank statements of the applicant are enclosed with the affidavit dated 1 April 2025. The learned counsel for the applicant submits that towards the bike, a partial payment of Rs. 5,00,000/- was paid to the first informant and towards monies received by the applicant from the first informant, the repayment of Rs. 12,50,000/- was made. The applicant is ready to co-operate with the police, therefore, the custody of the present applicant is not necessary. He referred to following judgments of the Supreme Court.

(a) Delhi Race Club (1940) Ltd. vs. State of UP [(2024) 10 SCC 690];

(b) Sumit Mehta vs. State (NCT of Delhi) [(2013) 15 SCC 570];

(c) Bimla Tiwari vs. State of Bihar [(2023) 11 SCC 607];

(d) Ramesh Kumar vs. State of NCT of Delhi [(2023) 7 SCC 461].

(e) Manish vs. State of Maharashtra and Anr [of the

Supreme Court passed on 2 April 2025]

6. The learned APP and the learned Advocate for the first informant have opposed the application of pre-arrest bail of the present applicant. They submitted that the applicant has cheated many people. There are antecedents reported as far as the present applicant is concerned. The affidavit cum undertaking given by the applicant is nothing but an eye wash to avoid making any kind of payment to the first informant. A fraud has been committed by the present applicant, who from the very inception had made up his mind to cheat the first informant. The custody of the present applicant would be necessary in order to find out the amount which was deposited with the applicant which according to the bank entries shows that as soon as the amount was deposited in installments with the present applicant, on that very day, the said amounts were transferred in the bank account of the sister of the present applicant or else-accused no.3 (neighbor of the present applicant). According to the applicant, he has invested the monies through his demat account. It is highly unbelievable that the person will invested money in share market for others from is demat account. The custody of the present applicant would be necessary in order to find out the truth.

7. I have heard the counsel for all the sides and have gone

through the documents on record.

8. From the mere allegations made in the FIR, it can be seen that the applicant was known to the first informant and took advantage of the good relationship between them and initially he took sum of Rs.17,00,000/- from the first informant. Immediately thereafter, he took way the bike of the first informant and thereafter took additional Rs.35,00,000/- on the pretext of buying land at village Karla. Even the bike which was taken by the applicant was not returned back to the first informant. The said bike as of now, is in the custody of the police. The documents of the said bike are still in the name of the first informant.

9. The applicant has tendered two affidavits before this Court. The first affidavit cum undertaking dated 24 March 2025 admits that a sum of Rs.95,00,000/- was received from the first informant. In the said affidavit, the applicant promises to pay a sum of Rs.82,50,000/-. The first installment of repayment of same would start from 15 June, 2025 and the last installment would be in June, 2028. By an additional affidavit dated 1 April, 2025 the applicant in paragraph No. 2 admits that a sum of rs. 82,50,000/- was received from the first informant. However, he further stated that the said amount was transferred to his "demat account". There was heavy loss on the amount invested in the share market since the amount was invested in "equity derivatives." Hence, the applicant has not able to repay the amount to the first

informant. The mother of the present applicant has been granted pre-arrest bail by this Court as she was 68 years of age and the amount were not transferred to her account.

10. As per the APP the applicant has already cheated one person by name Francis Kalus Bareto to the tune of Rs. 84,75,000/- on the pretext of development of software for school management. The applicant also took the bike of the present first informant for a short while and did not return the same. The police has now taken the custody of the said bike. Hence, as of today the first informant has also lost his bike. Though the claim of the applicant is a part payment of the bike was made to the first informant, the applicant has taken huge amount from the first informant and has not been returned the same.

11. As far as the ratio of the judgments referred by the present applicant of the Supreme Court are concerned, there is no doubt that a law on the issue of commercial dispute cannot be given the color to criminality. However, the said proposition of law is not applicable in my view to this proceeding since, the applicant is a person here to take advantage of his relationship with the first informant, to take away their entire amount on the pretext of purchase of land and now, is making a statement that the said amount has been invested in his 'demat account'.

12. According to me a demat account of the first informant could have been opened and the amount of the first informant could have been deposited in the said 'demat account of the first informant'. There is no need for the applicant to transfer that amount to his own 'demat account'. So also, I have been shown the bank entries to suggest that the day a part payment was received from the informant, the applicant had transferred the said money to his sister's account or else to the account of accused no. 3. This shows the intend from the beginning of the present applicant was clear to cheat the first informant. So also, the fact that even the bike of the first informant which was taken way by the present applicant, was never returned back by him inspite of several request being made by the first informant. Hence, the first informant filed an FIR. The police have now taken the custody of the bike. The physical presence of the present applicant for interrogation is necessary for completion of investigation. Moreover, there is a possibility of the applicant to pressurizing and threatening the witnesses and likely to tamper with evidence.

13. The Supreme Court in case of ***Sumitha Pradeep vs. Arun Kumar C.K. and another*** [1] in paragraph 12 has held as under :-

> "12………. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial

1 2022 SCC Online SC 1529

> interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."
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> (Emphasis supplied)

14. A similar view has been taken by the Supreme Court in the case of *the* ***C.B.I. vs. Anil Sharma***[2], in paragraph 4 which reads as under:-

> "4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders."
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> (Emphasis supplied)

2 AIR OnLine 1997 SC 797

15. Taking into consideration the contents of FIR, the documents on record and considering the law laid down by the Supreme Court in above judgments, according to me, I am convinced that the anticipatory bail application requires to be rejected. Hence, **the anticipatory bail application stands rejected and disposed of accordingly**.

(RAJESH S. PATIL, J.)