IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 997/2025

SANJAY BHALCHANDRA KHANKARI & ANR ..APPLICANTS
VS.
STATE OF MAHARASHTRA ..RESPONDENT

Adv. Pratik Kalantri for applicants.
Mr. A. A. Palkar, APP for the State.

CORAM : RAJESH S. PATIL, J.

DATE : MAY 8, 2025.

P.C. :

1. This application is filed under Section 438 of the Code of Criminal Procedure for seeking pre-arrest bail in connection with the First Information Report (FIR) No.93/2025 registered with the Mumbai Naka Police Station, for the offence punishable under Sections 420 read with 34 of the Indian Penal Code.

2. Based on the complaint filed by the informant, an FIR has been registered. The role of the present applicants has been clearly mentioned in the FIR.

3. It is the case of the present applicants that it is purely a civil transaction which is given a colour of criminality. It is submitted that the amount of Rs.30 lakhs was not meant for purchase of any plot. It is called as a 'hand-loan'. A receipt to that regard is enclosed at page 50 in the present proceeding wherein it has been stated that a sum of Rs.30 lakhs has been given by the informant to the applicants. Further, it has been argued before me that pursuant to the hand-loan, two cheques were handed over. The said two cheques were bounced on presentation, hence, the complaint under Section 138 of the Negotiable Instruments Act has been filed, and the same is pending before the JMFC Court. It is submitted that once a complaint under Section 138 of the Negotiable Instruments Act is pending, a complaint under Section 420 of the Indian Penal Code could not have been filed before the police.

4. It is the case of the prosecution that the amount of Rs.30 lakhs for purchase of plot of land and the applicants have cheated the informant and not purchasing the land and not returned back the amount of Rs.30 lakhs.

5. The learned APP submits that the two complaints under Section 138 of the Negotiable Instruments Act are pending before the JMFC Court. However, the complaint under Section 420 of the Indian Penal Code has been filed though the complaint under Section 138 of the Negotiable Instruments Act has been filed earlier by the informant. The complaint is filed on the basis that the informant had an intention to cheat at the very inception by receiving a sum of Rs.30 lakhs meant for purchase of plot. Neither the plot of land was purchased for the informant nor the monies are returned back.

6. One thing is clear that the hand-loan for purchase of the plot of land the informant has paid a sum of Rs.30 lakhs to the applicants. Therefore, if a transaction for which it was meant had not been completed, the applicants were supposed to return the said money. It is admitted that the said sum of Rs.30 lakhs has not been paid back to the informant. The cheques issued for a sum of Rs.30 lakhs have be dishonored.

7. The learned counsel for the applicants relied upon the judgment of the Supreme Court in the case of ***G. Sagar Suri and another versus state of U.P. and others***[1]**.** More particularly he relied upon the paragraph no.14 of the said judgment. The paragraph no.14 of the said judgment of the Supreme Court discussed the issue wherein the members of the family of the Managing Director were added as a party in Section 138 complaint. Hence, the Supreme Court further held that there was no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC. It is clear an

1 (2000)2 SCC 636

abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed. According to me, this authority does not help the present applicant.

8. The Supreme Court, subsequently in the year 2012 in the case of ***Sangeetaben Mahendrabhai Patil vs. State of Gujarat and another***[2] held that though complaint under Section 138 of the Negotiable Instruments Act is filed, subsequent complaint under Section 406/420 of the Indian Penal Code is not barred. Paragraph nos. 37 to 39, reads as under:-

> 37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.
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> 38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.
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> 39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

9. In the year 2022, the Division Bench of the Supreme Court in

2 (2012) 7 SCC 621

the case of ***J. Vedhasingh versus R. M. Govindan and others***[3]**,** considering the judgment of ***G. Sagar Suri*** (supra) and ***Sangeetaben Mahendrabhai Patil*** (supra) referred the issue to Larger Bench to decide.

10. Hence, the issue which judgment lays down the correct law is still pending for Larger Bench to be decided. ***Sangeetaben Mahendrabhai Patil*** (supra) is the last decision on the issue. In my view, the ratio laid down in ***G. Sagar Suri*** (supra) does not help the present applicant as in that proceeding it concerned with family members of Managing Director being tried under Section 138 of the Negotiable Instruments Act.

11. Hence, according to me, considering the facts as narrated above of the present proceedings, no case is made out the grant pre-arrest bail to the applicants. **The anticipatory bail application of the applicants stands rejected and disposed of accordingly**.

(RAJESH S. PATIL, J.)

3 2022 SCC OnLine SC 1010