IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Anticipatory Bail Application No.2132 of 2025

Shaikh Nizamuddin Mohinuddin
Age 49 years, Occupation: Business
Residing at Flat No.2702, 27th Floor,
Rustomjee Urbania, Athena A Wing,
Eastern Express Highway, Majiwada,
Thane - 400607 … Applicant

versus

The State of Maharashtra
Through Wadala TT Police
Station, Mumbai … Respondent

Mr Janardan Dwivedi, for the applicant.
Mr SM Mangaonkar, APP, a/w. Mr Shahaji Shinde, "B" Panel Counsel, for the respondent/ State.
PI Gourishankar Pable, Wadala Track Terminal Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 31 July 2025.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.274 of 2025, registered at Wadala TT Police Station, for offences punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code (IPC).

2. It is the case of the prosecution that, in October 2023, the

informant sought a flat on leave and license and was introduced to applicant No.1, who offered a flat in his wife's name at Lodha Dioro, Wadala. A leave and license agreement was executed on 23 October 2023. between applicant No.1 and the informant and his wife for 36 months, and Rs.95 lakhs was paid to applicant No.2's HDFC account. Later, the informant received EMI default notices from UGRO Capital Ltd. and discovered the flat was mortgaged with a loan of Rs.2.57 Crores. On 29 April 2025, UGRO officials took the possession of the flat, thereby dispossessing the informant. After that the informant requested the applicant to refund the security deposit amount but he refused, prompting the informant to file the present FIR.

3. The learned Counsel appearing on behalf of the applicant, contends that the offences under Sections 406 and 420 of the Indian Penal Code are not *prima facie* made out, as there was no dishonest intent from the beginning. The dispute arose from a loan default and was beyond the applicant's control. The security deposit of Rs.95 lakhs was paid under a leave and license agreement, and its non-refund stems from these uncontrollable circumstances. The learned Counsel argues that the matter is civil in nature, relating to recovery of the deposit. The complainant's grievance is linked to a lawful SARFAESI

proceedings by UGRO Capital Limited, which led to his eviction pursuant to a Court order dated 5 December 2024.

4. The learned Additional Public Prosecutor representing the respondent/ State, opposing the applicant's plea for pre-arrest bail submits that the applicant was fully aware of his default in the repayment of the loan EMIs and was also cognizant of the impending action of attachment by the financial institution. Despite this knowledge, he proceeded to enter into a leave and license agreement with the informant and his wife, the senior citizens, without disclosing the fact that the said flat was mortgaged. This agreement is completely silent on this crucial aspect. He further submits that the sum of Rs.95 lakhs paid by the informant and his wife was not utilised towards repayment or adjustment of the outstanding loan amount. The conduct of the applicant, therefore, reflects a clear intent to deceive and cause wrongful loss to the informant and his wife. Furthermore, the investigation is at a nascent stage.

5. I have given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. It is a settled position in law that the power to grant anticipatory bail is extraordinary and must be used with caution and discretion, based on the specific facts of each case. Unlike

regular bail, it cannot be treated as a general rule. Courts must avoid a one-size-fits approach, as granting such pre-arrest bail in serious cases may affect the investigation. All these aspects are highlighted in the decision of the Hon'ble Supreme Court in *Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282.*

7. Upon perusing the records, it appears that the leave and license agreement was executed on 23 October 2023 between the applicant and the informant and his wife. The agreement did not disclose that the property was already mortgaged. The applicant received Rs.95 lakhs from the informant, of which Rs.63 lakhs was paid to the previous licensee. Clause No.10 of the agreement included a commitment by the applicant to compensate the informant if asked to vacate. Although the applicant claimed that there was an understanding to adjust the amount against the loan, he failed ot do so, citing business losses from an accident that occurred two months after the agreement. Instead of repaying the loan, he repaid the prior licensee's deposit. Due to default, the applicant was dispossessed by the said financial institution, causing loss to the informant. The non-disclosure of mortgage and acceptance of a large sum from the informant indicates inducement from the outset. That apart, during the proceedings of the anticipatory

bail application before the Sessions Court, the applicant expressed willingness to repay but failed to do so despite mediation and promises of post dated cheques. However, the the applicant failed to provide the cheques. There is *prima facie* evidence of misrepresentation and inducement involving Rs.95 lakhs.

8. Considering the nature of allegations, the conduct of the applicant and the fact that the investigation is at a nascent stage, this Court is not inclined to exercise the discretion in favour of the applicant. Accordingly, the application stands rejected.

(R.N. Laddha, J.)