IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.2218 of 2025

Shaikh Nikhat Nizamuddin,
Aged: 45 years, Occupation: Housewife,
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 Sanjay Saraf, a/w. Ms Ruhi Nadeem Ansari, for the applicant.
Mr SV Walve, APP, for the respondent/ State.
PI Gourishankar Pable, Wadala Truck Terminal Police Station, Mumbai, is present.

Coram: R.N. Laddha, J.
Date: 8 August 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, Mumbai, for offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code.

2. The prosecution's case is that in October 2023, the informant sought a residential unit under a leave and license agreement and was subsequently introduced to the co-accused, who presented an apartment registered in the name of his wife, the applicant, at Lodha Dioro, Wadala. Accordingly, a leave and license agreement was executed between the applicant as the licensor and the informant and his wife as the licensees, for three years against a refundable security deposit of Rs.95,00,000/-, which was transferred to the applicant's account through banking channels. Shortly after occupying the premises, the informant received notices regarding defaults on the EMIs from UGRO Capital Ltd, leading to the discovery that the flat was encumbered by a mortgage loan amounting to Rs.2.57 crores. On 29 April 2025, officials from UGRO Capital Ltd took possession of the flat, resulting in the informant's dispossession. Following this, and despite repeated demands, the applicant and the co-accused failed and refused to refund the accepted security deposit, thereby misappropriating the funds for their benefit and defrauding the informant.

3. Mr Sanjay Saraf, the learned Counsel appearing on behalf of the applicant, asserting the applicant's innocence, contends that the applicant has been falsely implicated in the crime. He submits that during the execution of the leave and license

agreement, the loan was not classified as a Non-Performing Asset, and no SARFAESI action had been initiated. The informant was aware of the mortgage as his close relatives were prior licensees, and the dispute is of a civil nature. According to the learned Counsel, *prima facie* no offence under Sections 406 and 420 of the Indian Penal Code is made out as there was no dishonest intent from the beginning. Mr Saraf further submits that the informant impeded the One-Time-Settlement efforts with the Bank to force the applicant to sell the premises at a concessional price. He also submits that the applicant has no criminal antecedents and is ready and willing to abide by any conditions this Court imposes.

4. On the other hand, Mr SV Walve, the learned Additional Public Prosecutor representing the respondent/ State, opposing the applicant's request for pre-arrest bail, contends that the offence is of a serious nature. He submits that the applicant was fully aware of the default in repaying the loan EMIs and understood the imminent risk of action for attachment by the financial institution. Despite this awareness, the applicant entered into a leave and license agreement with the informant and his wife, both of whom are senior citizens, without revealing that the flat in question was mortgaged and induced them to pay Rs.95,00,000/- towards security deposit. This

security deposit was transferred to the applicant's bank account and was not utilised for repayment or settlement of the outstanding dues. The learned APP submits that the investigation is still in its early stages, and the applicant's custody is essential to ascertain the money trail.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. It is a settled position in law that granting pre-arrest bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. Considering each case's specific circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant pre-arrest bail. There is no straitjacket formula. Caution is necessary, as granting protection in serious cases could hinder investigation or lead to a miscarriage of justice by allowing tampering with evidence. These aspects are highlighted in *Srikant Upadhyay Vs State of Bihar, 2024 SCC OnLine SC 282*.

7. Upon examination of the records, it appears that the Leave and License Agreement was executed on 23 October 2023, between the applicant and the informant along with the informant's spouse. The said agreement did not disclose the

material fact that the subject property was already mortgaged to a financial institution. Pursuant to the execution of the agreement, the applicant received a sum of Rs.95 lakhs from the informant, out of which Rs.63 lakhs was remitted to the previous licensees. Clause 10 of the agreement expressly provided that the applicant would indemnify and compensate the informant in the event of being required to vacate the premises. Although the applicant has contended that there existed an understanding to adjust the said amount towards an outstanding loan, no such adjustment was effected. The applicant attributed her failure to do so to the alleged business losses from an accident of her husband occurring approximately two months subsequent to the agreement. However, instead of repaying the loan or refunding the amount to the informant, the applicant applied part of the funds towards repayment of the prior licensee's deposit. Owing to default in repayment to the financial institution, the applicant was dispossessed of the said premises, thereby causing loss and prejudice to the informant. The deliberate non-disclosure of the subsisting mortgage at the time of the execution of the agreement, coupled with the acceptance of the substantial funds from the informant, *prima facie* indicates inducement and dishonest intent from the inception of the transaction. 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 spending considerable time in mediation and promises of post-dated 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 its discretion in favour of the applicant. Accordingly, the application stands rejected.

(R.N. Laddha, J.)