

MHCC020172082022



BEFORE THE DESIGNATED COURT UNDER M.P.I.D. ACT
CITY CIVIL & SESSIONS COURT, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.2816 OF 2022

1. Milan Ramniklal Parekh]
Aged : 63 years, Occ : Business]
Residing at 01, 3-B-191, Kalpataru CHS,]
L.B.S. Road, OPP. R City Mall,]
Ghatkopar (West), Mumbai-400 086.]

2. Bakul Ramniklal Parekh]
Aged : 59 years, Occ : Business]
Residing at Flat No.07, Plot No.253,]
IIrd Floor, Aashish Building,]
Sion Matunga Main Road,] *Applicants/*
Sion, Mumbai-400 022.]... *Accused*

Versus

The State of Maharashtra]
(Through EOW, Mumbai)]... *Respondent*

Appearances:-

Ld. Advocate Eknath Sawant along with Ld. Advocate Prashant Malik for the Applicant.

Ld. SPP V. C. Malankar for the State/ Respondent.

**CORAM : HIS HONOUR JUDGE
SHRI S. M. TAPKIRE
(Court Room no. 7)**

DATED : 10th January, 2023.

ORAL ORDER

1. This is an application under Section 438 of The Code of Criminal Procedure, 1973 for availing the protection of pre-arrest bail to

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the applicants/accused in connection with crime vide C.R. No.142 of 2022 registered with respondent/EOW (C.R. No.927 of 2022 registered with MRA Marg Police Station) for the offences punishable under Sections 409, 420, 477(A) r/w Section 34 of the Indian Penal Code, 1860 (hereinafter referred as "IPC").

2. The Respondent/EOW and Investigating Officer have strongly opposed to the pre-arrest bail plea of applicants by filing their written say at Exhibit No.02.
3. Perused the application, plea, grievance, submissions grounds raised therein coupled with documents placed reliance by the applicants along with the written say of respondent. Heard, Ld. Advocate Eknath Sawant along with Ld. Advocate Prashant Malik for the Applicants and Ld. SPP V. C. Malankar for State/ Respondent.
4. Taking into consideration, rival submissions, contentions and availed record it revealed the impugned crime raised only against both the applicants by the person namely Smt. Sharmin Ateeq Ur Rahman Khan by raising allegations that her husband and father-in-law were investing the money in share market and purchasing shares stock. On 23.08.2017, as per advice of the official of YES Bank, the entire shares of them transferred in the account of Financial Establishment of applicants' namely M/s. Action Financial Services (India) Ltd. in their Demat Account No.10181347. The applicants have informed about the scheme namely Platinum Floated by them. Wherein, they have deposited Rs.2,50,000/-, the said account also attached to their Union Bank

of India, Mazgaon Branch. In September 2017, the applicants have instigated and lured them by giving assurance to provide 10.8% interest p.a. if they have provided their shares on lent to the Financial Establishment of applicants. They accepted the said offer and lent the entire shares to them in that regard the lending agreement of shares also made and executed the value of all the shares whereas Rs.7,01,63,617/-. Even thereafter, on 01.07.2019 she transferred Rs.14 Lakh in said demat account. Further on 16.10.2019, Rs.4,37,000/- and the previous balance Rs.2,50,000/- all have been transferred in the Financial Establishment of applicants. As per oral agreement, they have assured to provide the interest on that amount Rs.20,87,000/- @ 9% p.a. Further the applicants have also advised to them to invest the amount Rs.35,00,000/- availed in their trading account and assured to provide interest @ 11.5% p.a. Thereby, initially 3 installments of interest Rs.10,56,761/- also received to her. However, since July 2020, the applicants stopped to disburse the interest amount and recile from their response. Thereby, the applicants though entrusted their huge amount Rs.10,73,23,038/- entrusted with them and the same is accepted by the transaction of lending. However, by dishonestly deceived cheated to them and misappropriated the entire amount.

5. The applicants in regard to allegations leveled against them come with the case that no any offences committed by them. However, falsely implicated to them. In fact no any offences under Sections 409, 420, 477-A r/w 34 of IPC made out or constitute against them as in between informant and them, there was just

transaction of lending of amount and shares. The informant and her husband by their own lend shares and amount to them towards interest @ 10.8% and 11.5%. Thereby, the said transaction just comes under the purview of money lending towards interest amount. The same does not come under the criminal or penal liability. However, falsely implicated in impugned crime to them. In fact applicants' YES Bank had sold the shares belonging of the customers of their Financial Establishment which were provided as collateral security to YES Bank. The informant is very well aware about the said factum. Thereby, alleged amount and shares not used by the applicants for their own personal purpose or any other reason. In view of nature of allegations raised against them certainly the said transaction and matter comes under the civil litigation. Thereby, no any offence could arise or constitute by any manner. Also submitted that they have co-operated to Investigating Agency and supplied all the documents. Upon considering reply submitted by them and grounds reasons raised therein for rejection of pre-arrest bail no any cogent considerable reliable ground raised by them for having custodial interrogation of them. On relying it requested to grant the protection of pre-arrest bail. They also raised general grounds.

6. The respondent has vehemently objected to plea of pre-arrest bail of applicants on the grounds that the applicants by dishonestly lured instigated, deceived to informant for investing their huge amount by giving assurance promise to provide huge interest amount on their investment sum and paid interest for three

months and later on resiled. In regard to such natures allegations every fact circumstance required to investigate properly. Also necessary document required to be seized for which custodial interrogation is necessary. Thereby, requested to reject the plea raised by the applicant.

7. In above such circumstances having into consideration, rival submissions, contentions and availed record it inclined the informant and her husband had provided money and shares of them on lent to the applicants and their Financial Establishment M/s. Action Financial Services (India) Ltd. towards consideration of interest @ 10.8% p.a. and 11.5% p.a. It is alleged that the applicants by lured instigated to them dishonestly deceived cheated by giving assurance to provide the smart interest amount on the money and shares lending transactions and later on resiled from it. Per Contra the applicants have submitted that the informant and her husband have just lend the amount and shares to them towards interest amount. By their own entire shares transferred in account of their Financial Establishment. Even the amount lent by them was also deposited in account of said Financial Establishment. However, upon arising of emerge of disease Covid-19 during that period share market was severely collapsed. While it, they have caused huge loss and the entire shares and amount deposited in the account of said Financial Establishment forfeited by the YES Bank. Therefore, no any amount mis-appropriated by them for their own purpose, use. By such rival submissions and principally in F.I.R. the material relevant considerable allegations raised that the informant and

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her husband have lent the money and shares to applicants and their Financial Establishment towards the interest amount. Prima facie it inclined the said transaction is purely money and share lending transaction. Moreover, in regard to the said transaction Agreement of Margin Trading dated 01.08.2019 is also made and executed. The same is admitted by the informant through the content of her F.I.R. When prima facie inclined that as there was transaction of money and shares lending in between them and the same was made and executed occurred with the consent of informant and her husband. In such circumstance prima facie doesn't inclined revealed any force or substance in regard to alleged charge of offence. Moreover, it also inclined that the substantial relevant material facts are just concern with the documentary evidence and the same are in custody of informant and Investigating Officer. Just for collecting the documentary evidence and information thereof, certainly custodial interrogation of any applicant would not require essential for any purpose. Further in view of plea allegations nature of objection of respondent/State, I felt by saddling stringent condition, I would appropriate to have the protection of pre-arrest bail to the applicants. Hence, I passed the following order :

ORDER

1. The present Anticipatory Bail Application No.2816 of 2022 is hereby allowed, subject to following conditions by applicants /accused:-
 - i. The applicant no. 1 Milan Ramniklal Parekh residing at 1,3-B-191, Kalpataru CHS, L.B.S. Road, Opp. R City Mall, Ghatkopar (West), Mumbai-400 0860, applicant no. 2. Bakul Ramniklal Parekh residing at Flat no.7, Plot no.253, IIIrd floor, Aashish Building, Sion Matunga Main Road, Sion, Mumbai-400 022 be

released on executing a PR Bond of Rs. 10,00,000/- (Rupees Ten Lakh Only) with furnishing one or two solvent sureties in the like amount by each applicant in crime vide C.R. No.142/2022 registered with EOW, Mumbai (C.R. No.927/2022 registered with MRA Marg Police Station) for the offences punishable under Sections 409, 420, 477(A) r/w Section 34 of Indian Penal Code, 1860.

- ii. The applicants shall co-operate in investigation, as well as whenever required, they shall availed for interrogation.
- iii. The applicants shall not tamper or hamper the prosecution witnesses and evidence by any manner.
- iv. The applicants shall not leave the jurisdiction of Court without prior permission of this Court.
- v. The applicants shall deposit their passport with the Investigating Officer, if any, availed with them.
- vi. The applicants shall not indulge in any criminal activity.
- vii. The applicants are directed to record their presence with the Respondent and Investigating Agency on every Tuesday and Friday between 11.00 a.m. to 5.00 p.m. until submission of charge-sheet.
- viii. The applicants shall submit their proper considerable address proof as well as telephone and cell numbers with respondent / Investigating Officer in view of their contact.
- ix. In the event of breach of any condition or default this pre-arrest bail order availed to the applicants shall liable to be canceled.

2. Accordingly, respondent/State and the concern I.O. to take the note of this order.

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3. The present Anticipatory Bail Application No.2816 of 2022 stands disposed of accordingly.

(Dictated and pronounced in open Court)

Date : 10.01.2023.

(S. M. Tapkire)

Addl. Sessions Judge,
City Civil & Sessions Court, Mumbai.

Dictated on : 10.01.2023.
Transcribed on : 16.01.2023.
Signed on : 23.01.2023.

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER”

On 24.01.2023 at 12.43 p.m.
UPLOADED DATE AND TIME

Mrs. G. P. Acharekar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room no.)	H.H.J. S. M. Tapkire C.R. No.07
Date of Pronouncement of Judgment/Order	10.01.2023
Judgment /Order signed by P.O. on	23.01.2023
Judgment/Order uploaded on	24.01.2023