

MHCC020169772022



IN THE COURT OF SESSIONS FOR GREATER BOMBAY
(Presiding over by K. P. Shrikhande)

ANTICIPATORY BAIL APPLICATION No.2773 OF 2022

Applicants : **1. Mr. Nilesh Rasiklal Dalal**
Age about :- 60 Years, Occ. Business.
Residing at : Ramprabha, 5th Floor,
Flat No.501, K. D. Desai Road,
Mithibai College, Vileparle (W)
Mumbai- 400 056.

2. Mr. Anuj Ajay Desai
Aged about 58 years, Occ. Business.
Residing at : B-132, Juhu Geetanjali,
Vastuship CHS Ltd., Gulmohar
Cross Road No.11, JVPD Scheme,
Juhu, Mumbai- 400 049.

- **Versus** -

Respondent: **STATE OF MAHARASHTRA**
vide its C.R. No.63 of 2021 registered at
Santacruz police station, Mumbai.

Shri Vivek Kumar N. Singh, advocate for the applicants.

Shri Mahesh Thaker, advocate for intervener.

Shri Ajit Chavan, APP for respondent/State.

ORAL ORDER

(Dated 7th January, 2023)

This is an application moved by the accused-applicant No.1 Mr. Nilesh Rasiklal Dalal and No.2 Mr. Anuj Ajay Desai under section 438 of Cr.P.C. for grant of anticipatory bail. According to them, Santacruz police station has registered a crime No.63/2021

on 18/02/2021 for the offence punishable under sections 409 and 420 r/w 34 of the IPC on the report of Shrikant Digambar Kulkarni. According to them, they committed no offence; however, the complainant lodged a false report and gave the colour as criminal to the civil dispute and therefore, they have an apprehension of their arrest in the said crime and as such, they filed the present application.

2] As per the case of the prosecution, Velji and Dipen are the partners of 'J.J. Associates' company, and their office is situated in the area of Santacruz (West), Mumbai. There was a meeting of the complainant with Velji, Dipen and his partners, and the applicants being the directors of 'Concrete Lifestyle and Infrastructure', and it was projected him that there is a clear title on the land, having plot No.72/A, Shivaji Park scheme Mahim, CS No.1782/A, and they wanted to construct the building on the said land and they are having necessary permissions from the concerned authorities, and the construction would be started within six months, and believing upon their representation, the complainant booked 4 flats for the amount of Rs.6 Crores and it was agreed to give the advance amount of Rs.2 Crore and 52 Lakhs, and accordingly from time to time, the said amount was given to the JJ Associates Company. According to the prosecution, amount of Rs.71 Lakhs was given time to time by the cheques, and amount of Rs.1 Crore and 81 Lakhs was given in cash in the year 2007-08, and Velji had also issued the receipts in respect of receiving the cash amount and the cheque.

3] According to the prosecution, the project of construction of building was not started within the period as agreed and pulled

on the matter time to time by putting forth the excuses. To earn the confidence of the complainant, Velji would show some documents, but those documents were not complete for the purpose of starting the project. When the complainant found that the project was not started though considerable period was elapsed, the complainant suspected something fishy and therefore, he asked Velji to give him the security for the amount he had given, and then Velji issued two cheques, one cheque of Rs.71 Lakhs and another cheque of Rs.1 Crore and 81 Lakhs, both dated 31/12/2009. Thereafter also the construction of the building was not started and failed to deliver the possession of the flats and even failed to enter into the agreement and thus Velji, his partners and 'JJ Associates Company' and applicants being the directors of 'Concrete Lifestyle and Infrastructure Company' misappropriated the amount which was given for the purpose of purchasing the flats and therefore, feeling deceived, the complainant had lodged a report on 13/02/2016 at Santacruz police station, Mumbai, but no action was taken by the police on the said report.

4] According to the prosecution, the said project i.e. building was to be constructed by the company 'Concrete Lifestyle and Infrastructure', and the directors of J. J. Associates Company were saying that the amount has been given to Concrete Lifestyle and Infrastructure Company, by transferring it in its bank account, but there is a dispute between 'J.J. Associates' Company and, Concrete Lifestyle and Infrastructure Company, and the both the companies were throwing the responsibility and blame on each others. Thus, as per the case of the prosecution, despite of receiving the amount of Rs.2 Crore and 52 Lakhs from the complainant, the partners of 'JJ Associates Company' and the

applicants have cheated the complainant and also misappropriated the amount handed over to the partner of the 'J.J. Associates'.

5] The learned APP submits that certain documents in respect of the transaction and the project are necessary to be seized for the purpose of investigation. According to him, despite of serving the notice under section 41 (A) (1) of Cr.P.C., the applicants failed to appear before the investigating officer and failed to co-operate in the investigation. If the anticipatory bail is granted to the applicants, they would misuse their liberty and would not co-operate in the investigation and would create the hurdle in the investigation. According to the learned APP, possibility of destroying the evidence in case of granting anticipatory bail is looming large. He submits that the applicants may also create pressure on or threaten the witnesses to dissuade them from assisting in the investigation, and as such prayed for rejecting the application.

6] The counsel for the applicants submits that the dispute projected by the prosecution is purely civil in nature and there is no need of custodial interrogation, and as such prayed for granting anticipatory bail. He further submits that the applicants are ready to abide by any condition and ready to co-operate in the investigation.

7] On going through the application, reply filed by the prosecution, and on hearing both the parties and also the intervenor/complainant at length, it is appearing that transaction between the 'J.J. Associates' and the complainant took place in the year 2007 and 2008. It is appearing that the complainant has

given six cheques, total amounting to Rs.71 Lakhs. Undisputedly, Velji, a partner of 'J.J. Associates' had issued two cheques in favour of the complainant towards security. One cheque was of Rs.71 Lakhs and another cheque was of Rs.1 Crore and 81 Lakhs. It also appears from the case of the prosecution that Velji had also issued one receipt in respect of receiving the amount of Rs.71 Lakhs by cheques and another receipt in respect of receiving Rs.1 Crore and 81 Lakhs by cash. If Velji had not received the amount of Rs.1 Crore and 81 Lakhs from the complainant, he would have not issued the cheque for the said amount in favour of the complainant towards security.

8] When Velji as a partner of 'J. J. Associates' has received the said amount, it was his bounden duty to see that the building is constructed and the possession of the flats is delivered to the complainant, or at least amount he received should have been returned to the complainant. Though 'J. J. Associates' has come out with the case that amount of Rs.71 Lakhs was given to Concrete Lifestyle and Infrastructure Private Limited Company, who was supposed to construct the building, but the said Company failed to discharge its obligation and didn't construct the building within time; there is no sufficient materials to show that in fact amount received from the complainant was transmitted to 'Concrete Lifestyle and Infrastructure'. It is not appearing that any amount was received by the applicants or their company from the complainant or any tripartite agreement was there.

9] The materials placed on record are falling short to assume that the applicants or their company have cheated the complainant. When there was no direct transfer of any amount

from complainant either to applicants or their company, there can not be a breach of trust by the applicants. Mere suspicion about involvement of the applicants or their company is not sufficient to refuse the cover of protection of their liberty and therefore, I am of the view that protection from the arrest by the police can be given to the applicants by granting them the anticipatory bail, but by imposing certain conditions. In the result, I proceed to pass following order:-

O R D E R

1. The Anticipatory bail application No.2773 of 2022 is allowed.
2. In the event of arrest of the applicant No.1 Mr. Nilesh Rasiklal Dalal and No.2 Mr. Anuj Ajay Desai in the crime No.63 of 2021 registered at Santacruz police station, Mumbai for the offence punishable under sections 406 and 420 r/w 34 of the I.P.C, they shall be released on bail on executing PR bond of Rs.40,000/- each (Rupees Forty Thousands Only each) with one or two sureties in like amount subject to the following conditions:
 - i] They shall not induce or influence or pressurize or threaten to any of the prosecution witnesses to dissuade them from assisting in the investigation, or from attending or deposing before the court,
 - ii] They shall assist the investigating officer in the investigation of the crime, and shall attend the Santacruz police station twice in a week on every Wednesday and Saturday in between 11.00 a.m. to 02.00 p.m. till the end of February-2023, and thereafter, as and when called by the investigating officer on receiving due intimation.

iii] They shall hand over their mobiles, if ask by the investigating officer, for the purpose of investigation.

iv] They shall submit their active mobile numbers and the residential addresses and the proof of it to the investigating officer.

3. The Anticipatory bail application No.2773 of 2022 stands disposed off.



Date.07.01.2023

Date of Dictation : 07.01.2023

Date of typing : 16.01.2023

Date of signature : 16.01.2023

(K. P. Shrikhande)
Additional Sessions Judge
Gr. Mumbai, C.R.10

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
16.01.2023 at 03.05 p.m. UPLOAD DATE AND TIME	(Mr. S. V. AMBEKAR) NAME OF STENOGRAPHER

Name of the Judge	HHJ SHRI K. P. SHRIKHANDE (COURT ROOM NO.10)
Date of pronouncement of judgment/order	07.01.2023
Judgment/order signed by P.O. on	16.01.2023
Judgment/order uploaded on	16.01.2023