

MHCC050061752022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO. 1852 OF 2022

IN

(C.R. No. 942 of 2022 of MIDC Police Station, Mumbai)

Rahul Vijay Hire,

Age : 30 yrs., Occupation : service,

R/o : Flat No. NC-4, Panchratna

Renuka Mata Co. Operative Housing Society,

Near KV No. 1, Rest Camp Road,

Deolali, Nashik 422 - 401

..Applicant

Vs

The State of Maharashtra

(through MIDC Police Station)

..Respondents

Ld. Adv. Rishikesh Subhedar, for the applicant.

Ld. APP R.C. Sawale, for the State.

Ld. Adv. Shrikrishna More, for the intervenor.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE

R.M. MISHRA

(C.R.NO.4)

DATE : 08th December, 2022

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 942 of 2022, registered with MIDC Police Station for the offences punishable under sections 420 and 406 of the Indian Penal Code.

2 Perused application and say. Heard learned advocate for the applicant, the intervenor and learned APP for the State.

3 At the instance of one Darshan Vinayak Shinde aforesaid offence came to be registered.

It is the case of the prosecution that in the year 2018 the aforesaid informant came into contact with one Paras Jadhav at Nashik. During the conversation, Paras Jadhav told him that he is serving in Q Net Company. On being convinced that he has good business opportunity, the informant has shown his readiness to join the said company and invest money in the said company. Said Paras Jadhav took the informant towards the applicant who was the senior of Paras Jadhav. After getting acquaintance with the applicant, the informant completed his training under the guidance of the applicant and joined the said company on the post of Distributor. As per the terms and conditions of the said company, the informant collected Rs. 10,20,000/- from his friends to create a network including his own contribution of Rs. 3,70,000/-. Thereafter, the informant transferred online the said amount of Rs. 10,20,000/- to the applicant for purchasing the products of the company. In the meantime, the applicant told the informant that

he is in need of money as he has taken educational loan. Therefore, the informant gave Rs. 4,60,000/- to the applicant by obtaining personal loan from HDFC bank. In the year 2020, the informant booked three airline tickets of Thailand to visit the exhibition arranged by Q Net Company. However, sister of the informant could not get her passport, therefore, the applicant took the said flight ticket from the informant but he did not pay the ticket amount of Rs. 26,000/- to the informant. By the passage of time, the informant came to know that the applicant has not purchased any product in the account of the informant. Therefore, when the informant made an enquiry, at that time, the applicant made a representation that they would have to pay the less amount, if the product is purchased in Thailand and also assured the informant that he would purchase the products for the informant in Thailand exhibition between 04/02/2020 to 07/02/2020. However, the applicant did not purchase any such product. The applicant thereafter, started avoiding the informant by giving lame excuses on one or other pretext. On being found that the applicant has committed cheating and misappropriated the aforesaid amount of Rs. 14,80,000/- from him, report came to be lodged accordingly in the police station.

4 By this application, the applicant has contended that he is permanent resident of Deolali, Nashik. It is contended that the applicant is law abiding citizen and having no earlier criminal antecedent. Entire allegations levelled against him are false and baseless. The applicant is not a Key Managerial Personnel in the said company and he is just an individual representative of the said company. The informant was

intimated by Paras Jadhav about the business opportunity in the said company and not by the applicant. While paying the money, the informant was knowing for what purposes the amount was to be utilized. The applicant has also invested money with the individual representatives of the said company. The informant has also filed civil suit against the applicant for the recovery of Rs. 11,69,172. There is long delay in lodging the report with intent to pressurize the applicant for entering into one time settlement. The applicant has also replied to the legal notice which was issued by the informant. The applicant has also shown his willingness to execute Memorandum of Understanding for the repayment of installments. The informant has joined the said company by accepting terms and conditions. The applicant is ready to abide the conditions imposed by the court in case of his release on anticipatory bail.

5 Application is resisted by the prosecution vide say at Exh. 03 mainly on the ground that the applicant has misappropriated total Rs. 14,80,000/- by cheating the informant. In order to elicit material information and to recover the said amount custodial interrogation of the applicant will be required. The applicant is having no permanent place of residence in Mumbai, therefore, there is possibility of his absconding if the applicant is released on bail.

6 The informant/complainant also resisted the application by filing intervenor application.

7 I have considered the submissions of the learned advocate for the applicant, learned APP as well as learned advocate for the intervenor. I have also gone through the case diary. Learned advocate for the applicant submitted that the so-called transaction took place between January, 2019 to October 2021 of which report came to be lodged in the month of August, 2022. There is inordinate delay in lodging the report that too after filing the suit by the informant/complainant. It is submitted that the entire case is based on documentary evidence. In support of his submissions, learned advocate for the applicant placed reliance on -

Dr. Suresh G. Motwani Vs State of Maharashtra & Anr. [2003 ALL MR (Cri) 2212, in which it is observed that in case of economic offence the object of criminal prosecution is to protect the investors and help them in recovery of the money and detention of offenders may not aid the recovery.

State of Maharashtra Vs Naresh Rajeswarrao Patil [2016 ALL MR (Cri) 2888], in which it is held that anticipatory bail application cannot be refused merely on the ground that the applicant is required for the purpose of investigation.

Mr. Jitendra Nathmal Joshi @ Sharma Vs The State of Maharashtra & Anr. [2011 ALL MR (Cri) 2597], in which it is held that Investigation machinery cannot be allowed to be used for the recovery of money.

Abhishek s/o Ashok Malve Vs The State of Maharashtra & Anr. [2022 ALL MR (Cri) 2810], in which it is held that imposition of onerous condition of deposit of amount proportionate of disputed

amount cannot be permissible when the custodial interrogation of the applicant found to be not required and the Courts cannot act as recovery agent.

8 On the other hand, learned advocate for the intervenor has submitted that the applicant though obtained money from the informant, he never deposited this amount to the company. The applicant has cheated several persons and misappropriated huge amount. So far as filing of civil suit is concerned, learned advocate for the intervenor submitted that mere filing of the suit for recovery of an amount would not discharge the criminal liability of the applicant towards the misappropriation of the aforesaid amount which has been obtained by way of cheating. On the other hand, Investigation Officer has submitted that the bank statement of the applicant and complainant are obtained by him in which it is shown that the amount has been transferred in the account of the applicant from the account of the complainant. On behalf of the intervenor, reliance is placed on -

Vinayak Dagadu Wadmare Vs State of Maharashtra [AIROnline 2019 Bom 2784], in which it is held that alleged incident is related to economic offence and there is prima-facie material on record which indicates the accused is involved in the said incident. It is, therefore, held that the application is liable to be rejected.

Meer Mohammed Sadiq alias Mohammed Sadiq Vs State [AIROnline 2019 Kar 544], in which it is held that the accused is involved in misappropriation of huge amount. In these circumstances, if the accused is supposed to be released on bail, there shall be adverse

impact on society.

Gurwinder Singh Bajwa Vs State of Punjab [AIROnline 2021 P and H 510], in which it is observed that the accused cheated the complainant under the pretext of sending him abroad by taking huge amount of Rs. 16,00,000/-. The said amount was given by the complainant after having sold his land. It is, therefore, held that investigation is in the province of the police and order of anticipatory bail should not operate as an in-road into the statutory investigation powers of police.

Amit Kannouje Vs State of Chhattisgarh [AIROnline 2018 Chh 578], in which it is held that investigation in an offence under section 420 of the Indian Penal Code was not completed and custodial interrogation of the accused was required, therefore, anticipatory bail application came to be rejected.

9 In the light of the respective submissions, I have carefully gone through the case diary. After careful consideration of the entire facts of the and circumstances on record, it reveals that the complainant while making allegations of fraud and misappropriation, he has put forth several instances. It is contended that the informant created network as per the terms of the company and contributed his own amount of Rs. 3,70,000/-. The informant obtained Rs. 2,00,000/- from Maruti Lad, Rs. 50,000/- from Rahul Tawde, Rs. 1,00,000/- from Amol Pise, Rs. 2,60,000/- from Aashutosh Ombale and Rs. 40,000/- from Amol Aangane. Accordingly, entire amount of Rs. 10,20,000/- transferred online to the applicant for purchasing products of Q Net

company. Secondly, it is contended that the applicant was in need of money, therefore, this informant availed personal loan of Rs. 10,25,000/- from HDFC company and out of it, he paid Rs. 4,60,000/- between 23/07/2019 to 02/08/2019 to the applicant. Third instance is that the applicant obtained flight ticket of Thailand from the informant of Rs. 26,000/- but he has not paid the said amount of Rs. 26,000/- to the informant.

10 In the aforesaid background, while considering the allegations of cheating and misappropriation of amount, it is significant to note that the informant himself had approached to the applicant through his friend Paras Jadhav who was also working in the said company. On the basis of the representation and assurances given by Paras Jadhav, the informant made up his mind to join the said company and invested money in the said business. Not only this, the informant himself has contended that he also undergone into the training under the guidance of the informant and thereafter, he has joined the said company as Distributor.

11 As can be seen from the aforesaid facts, the informant was giving the said amount in piecemeal to the applicant since 2019. Even if the informant came to know that the applicant did not purchase the so-called products in Thailand exhibition between 04/02/2020 to 07/02/2020, no any action was initiated. It reveals that the informant had also issued notice to the applicant on 04/02/2021 which was duly replied by the informant on 16/03/2019. Thereafter, in November,

2021, the informant filed suit for the recovery of the said amount i.e. 11,69,172/- in the City Civil Court. After careful consideration of the copies of notice exchanged between the parties, it reveals that the applicant has not only acknowledged the liability to some extent by admitting the transaction but the applicant has also shown his willingness to settle the dispute by offering the informant to enter into the Memorandum of Understanding.

12 Another significant thing to be taken into consideration is that the prosecution has not disputed in its say Exh. 03 that the applicant has attended the police station on 16/08/2022 and his statement also came to be recorded by the police. All these circumstances indicate that the transaction is of civil nature. The entire case is based on documentary evidence. Investigating Agency has also collected bank statement of the applicant. In these circumstances, having regard to the ratio as well as guidelines laid down in the case laws cited supra, I am of the view that the applicant is not required for any custodial interrogation. He has already co-operated the Investigating Agency even before filing this application. So far as the recovery of the aforesaid amount is concerned, informant has already filed civil suit for the recovery of the said amount. Therefore, considering all these circumstances, in my view, purpose will be served if the applicant is granted anticipatory bail by imposing certain conditions. In this view of the matter, following order is passed :

ORDER

1) Application under section 438 of the Code of Criminal Procedure for the grant of anticipatory bail is allowed.

2) In the event of arrest of the applicant **Rahul Vijay Hire**, in connection with C. R. No. 942 of 2022, registered with MIDC Police Station for the offences punishable under sections 420 and 406 of the Indian Penal Code, he be released on bail, on his executing PR Bond of Rs. 30,000/- (Rupees Thirty Thousand Only), with one or two solvent surety/sureties in the like amount, on the following conditions -

a) The applicant shall remain present before the Investigating Officer on every Sunday between 10.00 to 13.00 hours and shall co-operate the Investigating Officer as and when required until the investigation is completed.

b) The applicant shall not attempt to pressurize the informant and other prosecution witnesses in any manner so as to prevent them from disclosing any facts in respect of this crime.

c) In order to avoid the possibility of his absconding the applicant shall furnish the proof of his residence in support of the proof of his blood relatives.

3) Concerned Police Station be informed accordingly.

4) Anticipatory Bail Application No. 1852 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Dt. 08/12/2022

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 08/12/2022
Transcribed on : 12/12/2022
Checked on : 12/12/2022
Signed on : 12/12/2022

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| CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.” | |
| 13/12/2022 at 5.32 p.m. UPLOAD DATE AND TIME | Mrs. S.B. Vichare NAME OF STENOGRAPHER |
| Name of Judge (with Court room no.) | HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04) |
| Date of Pronouncement of JUDGEMENT/ORDER | 08/12/2022 |
| JUDGEMENT/ORDER signed by P.O. on | 12/12/2022 |
| JUDGEMENT/ORDER uploaded on | 13/12/2022 |