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THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.2603 of 2024

Vinaykumar Ashok Khatu
Age- 42 years, Occ.-Advocate,
Having office at -1, 3rd Floor,
Kamanwala Chambers,
Opp. Bombay Store, Sir P.M. Road,
Fort, Mumbai – 400 001

... Applicant

v/s.

1. The State of Maharashtra
Through Azad Maidan Police Station,
Mumbai.

2. Urmila Talyarkhan,
45 Golf Link, Lodhi Road,
New Delhi, India.

... Respondents

Ms Pushpa Ganediwala, along with Mr Amar Gharte and Ms Taiyaba Kazi, for the applicant.

Mr Yogesh Dabke, APP, for respondent No.1/ State.

Mr Rizwan Merchant, along with Ms Sanjana Pardeshi, Ms Ramiz Shaikh and Mr Harshil Gandhi i/by Rizwan Merchant & Associates, for respondent No.2/ informant.

WPI Neelima Kulkarni and PSI SB Ithape, Azad Maidan Police Station, Mumbai.

Coram: R.N. Laddha, J.

Date:14 October 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.308 of 2024, registered at Azad Maidan Police Station, Mumbai, for offences punishable under Sections 409, 420, 465, 466, 468, 471 and 474 of the Indian Penal Code.

2. The applicant, who claims to be a practicing Advocate, faces allegations from Mrs Urmila Dorab Talyarkhan, respondent No.2 herein. According to her, she engaged the applicant's legal services for various litigations, including a Second Appeal filed before the High Court. The informant alleges that she paid professional fees to the applicant periodically. It is further alleged that the informant filed the Second Appeal bearing (Stamp) No.22983 of 2022 through the applicant concerning a property in Alibaug. The applicant reportedly informed the informant that the High Court had issued a favourable order on 17 October 2022. Additionally, the applicant provided another order dated 12 December 2022, which purportedly allowed the Second Appeal filed by the complainant. The copies of these orders were handed over to

the complainant by the applicant. However, when these orders were not acted upon, the informant became dissatisfied with the applicant's work and decided to change the Advocate. Upon consulting her new Advocate and checking the official Website of the High Court, she discovered that no such orders had been issued. The orders provided by the applicant were found to be forged and fabricated. It is further alleged that despite receiving substantial fees, the applicant failed to fulfil his duties as a lawyer and misled and cheated the informant by presenting bogus and forged orders of the High Court. Consequently, an FIR has been lodged against the applicant.

3. Ms Pushpa Ganediwala, the learned Counsel appearing on behalf of the applicant, argues that there has been a significant and unexplained delay in filing the FIR. The applicant managed the informant's legal matters from January 2022 to May 2024. During this period, there was no mention of the alleged order in favour of the applicant or the disposal of the Second Appeal in any communication between the applicant, the informant, or Navdeepkumar, the informant's purported friend. In fact, WhatsApp conversations show that until June 2024, the informant was still inquiring about the status of her Second Appeal against Tukaram and seeking

updates on why it had not been listed on the court's cause list. Only after the applicant withdrew his power of attorney in June 2024 did this new narrative emerge, with the informant concocting a story and implicating the applicant. The learned Counsel contends that the informant herself fabricated the alleged High Court orders to support this false claim.

4. Ms Ganediwala highlights that the WhatsApp Chat records do not mention the term "High Court". The stay order in question was actually issued on 10 February 2022 by the Sub-Divisional Officer of Alibaug in RTS Appeal No.19 of 2022. Regarding the allegation of receiving Rs.2.30 crores from the informant, the learned Counsel clarifies that the applicant only received Rs.65,00,000/- in his account. The WhatsApp chat further indicates that Rs.30,00,000/- was paid towards sales tax, and Rs.60,00,000/- was paid towards customs duties. The applicant had quoted his professional fees at Rs.8,00,000/- per case, which was acceptable to the informant. In addition to the cases listed in Exhibit C, the applicant also handled 29 other legal matters for the informant, including civil, criminal, revenue, sales tax, and property-related cases. The learned Counsel emphasises that nothing in the FIR suggests that the applicant failed to handle the informant's legal matters

diligently, was absent during proceedings, or had any dishonest or fraudulent intent in managing the informant's affairs. Beyond legal representation, the informant also gave the applicant a general power of attorney to sell her property in Alibaug, underscoring the level of trust the informant placed in the applicant and further contradicting the allegations against him.

5. The learned Counsel contends that the applicant is facing two unfounded cases instigated by misleading reports on social media in Kerala and Delhi. Both cases involve bailable charges. The applicant has already been discharged in the Kerala case, and a discharge application is being filed for the Delhi case. The learned Counsel asserts that the applicant has not forged any documents related to these cases, and there is nothing on record to suggest that the applicant derived any unlawful profit therefrom. Even if it is assumed that the applicant forged the documents, there is no record showing that the applicant used them for personal gain. The prosecution's case is based on documents already in its possession, with no material implicating the applicant in any wrongdoing. Considering that the offence is triable by a Magistrate's Court and the applicant's willingness to cooperate

with the investigation, the applicant's custodial interrogation is unnecessary.

6. Mr Yogesh Dabke, the learned Additional Public Prosecutor representing respondent No.1/ State, submits that Section 409 of IPC has been added to this case. The learned APP contends that the applicant received a total of Rs.2.57 crores in his account. At the applicant's direction, this amount was transferred to various accounts. Furthermore, the applicant obtained this amount under the guise of securing favourable orders, and all this can be confirmed from his WhatsApp chats with the informant and her accountant. The learned APP further argues that the witnesses' statement indicates that the applicant delivered forged and fabricated orders purportedly issued by the High Court. The informant discovered the fraud when her new Advocate advised her to verify the orders on the Court's website. This constitutes a serious offence, warranting the applicant's custodial interrogation.

7. Mr Rizwan Merchant, the learned Counsel appearing for respondent No.2/ the informant, submits that the applicant has criminal antecedents. The applicant is accused of forging and fabricating High Court orders, which were then handed

over to the informant with instructions that the appeal had been decided in her favour, in the presence of witnesses, whose statements have already been recorded. Through WhatsApp messages to the informant's accountant, the applicant confirmed the alleged High Court orders. Over a period of time, the applicant has extracted Rs.2.57 crores from the informant, transferring the funds to his firm and associates. The details of these accounts were provided via WhatsApp and have been submitted to the investigating officer. The applicant has not provided any explanation regarding the contents of the FIR. He claims a fictitious land sale transaction in Ratnagiri with the informant's friend, Navdeepkumar, falsely stating that he received Rs.65,00,000/- in his account without any supporting documents. The applicant remained silent about the funds received in his and his associates' accounts. The applicant shared all account details, where Rs.2.57 crores were transferred, through WhatsApp to the informant's accountant. The learned Counsel draws the attention of this Court to the WhatsApp chats between the applicant and the accountant to substantiate these allegations.

8. Furthermore, Mr Merchant argues that the applicant falsely claims the informant has filed an FIR against Advocate

Nichani. In fact, the applicant himself sent a legal notice dated 7 June 2023 on behalf of the informant to Advocate Nichani. The applicant even sent WhatsApp messages to Navdeepkumar, falsely stating that Advocate Nichani had been arrested and was being presented before the Court of Magistrate. The applicant provided the informant with fabricated High Court orders, which were communicated via WhatsApp chat between the applicant and the informant's accountant, Vinay Mishra. Through these messages, the applicant claimed that the High Court had granted a stay order, which was not true. In April 2024, when the informant consulted another Advocate, she discovered that the order copies dated 17 October 2022 and 12 December 2022, given by the applicant, were false, bogus, forged and fabricated. The applicant created these forged High Court orders to deceive and defraud the informant in collusion with the legal heir of the deceased Tukaram Patil. Upon visiting the official High Court Website, the informant learned that the Second Appeal bearing (Stamp) No.22983 of 2023 was never listed for hearing. The application for condonation of delay in the second appeal was occasionally listed, but the Court never heard the application.

9. The learned Counsel argues that the applicant was fully

aware that the informant, aged 74 years, had no legal heirs to assist or manage her estates. Exploiting this situation, the applicant, in collusion with various known and unknown accomplices, orchestrated a sophisticated criminal conspiracy, fabricating High Court orders. In 2016, the Delhi police arrested the applicant for impersonating an IAS officer, claiming to be the Deputy Director of the Central Vigilance Commission (CVC). Following a complaint by the Secretary (Administration) of the CVC, the Kotla Mubarakpur Police Station registered an FIR and apprehended the applicant in Alibaug. The applicant had also produced fake visiting cards bearing the Government of India's emblems. The applicant has been involved in creating fraudulent documents to usurp innocent individual's land and properties, as reported in Mumbai Mirror. Again, in 2017, the Kerala police arrested the applicant for impersonating an IAS officer.

10. This Court has given anxious consideration to the rival contentions and perused the records, including the written notes of arguments placed on record by the respective Counsel.

11. The primary allegations against the applicant are that he deceived and defrauded the informant by providing forged

High Court orders dated 17 October 2022 and 12 December 2022 in the Second Appeal bearing (Stamp) No.22983 of 2022. Despite receiving substantial legal fees, he failed to fulfil his duties as a lawyer. The records indicate that the applicant managed various litigations for the informant and communicated about them via WhatsApp, addressing both the informant and her accountant. Notably, the WhatsApp communication regarding obtaining a stay order from the revenue authority occurred before the order was passed. The applicant denies discussing the stay order in the second appeal with the informant, but the records indicate he informed the informant's accountant about it through WhatsApp. Further, witness statements reveal that the applicant handed over copies of the alleged forged orders to the informant's employee. One of the forged High Court orders deliberately omits the names of the advocates representing the parties. Witnesses have categorically stated that the applicant provided these forged orders in their presence. Significantly, the informant transferred a substantial amount, totalling Rs.2.57 crores, to the applicant and others on the applicant's instructions. As an advocate, the applicant provided forged orders, misrepresented his client, and allegedly committed cheating and a criminal breach of trust. Balancing the protection of the applicant's rights with the

integrity of the investigation, given the serious nature of the allegations and the collected material, *prima facie*, indicates intentional wrongdoing by the applicant. The applicant obtained a Power of Attorney for selling the informant's land, which the informant later revoked. The applicant's willingness to accept the remuneration for the sale of the land and its commission via Power of Attorney exceeds his duties as an advocate. Forging the Court's order is a severe violation that undermines public trust in the legal system. Moreover, the applicant has criminal antecedents, and the investigation is at a nascent stage.

12. 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 circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail. A straitjacket formula cannot be applied. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. In this context, a profitable reference can be made to the decision of the Hon'ble Supreme Court in

***Srikant Upadhyay v. State of Bihar*¹.**

13. The principles to be considered for granting anticipatory bail are settled. The Court, *firstly*, must consider the *prima facie* case against the accused; *secondly*, the nature of the offence; and *thirdly*, the severity of its punishment. While bail can be denied on the requirement of custodial interrogation, its non-requirement cannot by itself be the sole ground to grant pre-arrest bail. These aspects are highlighted in ***Sumitha Pradeep v. Arun Kumar C.K.***²

14. In the totality of the circumstances, this Court is not inclined to accede to the submissions on behalf of the applicant. In cases like this, custodial interrogation is essential to fully uncover the extent of the fraud, including the money trail and the persons involved. The possibility of there being similarly circumstanced victims is also eminent. Additionally, the applicant has criminal antecedents. The release of the applicant on pre-arrest bail would impede the course of effective investigation. Therefore, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected.

1 2024 SCC OnLine SC 282.

2 2022 SCC OnLine SC 1529.

15. It is clarified that the observations made herein are *prima facie* only to determine the applicant's entitlement to pre-arrest bail.

[R.N. Laddha, J.]