



[2024:RJ-JD:34375]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



(1) S.B. Criminal Misc. Bail Application No. 5928/2023

1. Kamla Devi Agarwal W/o Shri Prem Kumar Agarwal, age 65 years, Resident of 2/6, Nagpal Colony, Sri Ganganagar (Raj.)
2. Rekha Rani W/o Shri Pradeep Kumar Agarwal, age 41 years, Resident of 2/6, Nagpal Colony, Sri Ganganagar (Raj.).

----Petitioners

Versus

State of Rajasthan through PP

----Respondent

Connected With

(2) S.B. Criminal Misc. Bail Application No. 5929/2023

Neha Agarwal W/o Pankaj Kumar Agarwal, Aged about 37 years, Resident of 2/6, Nagpal Colony, Sri Ganganagar (Raj.)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent

(3) S.B. Criminal Misc. Bail Application No. 7240/2023

Prem Kumar Agarwal S/o Ram Agarwal, Aged about 70 years, Resident of 2/6, Nagpal Colony, Sriganganagar (Raj.)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent

(4) S.B. Criminal Misc. Bail Application No. 7241/2023

Pradeep Kumar Agarwal S/o Prem Kumar Agarwal, Aged about 45 years, Resident of 2/6, Nagpal Colony, Sriganganagar (Raj.)

----Petitioner

Versus

State of Rajasthan through PP

----Respondent





For Petitioner(s) : Mr. Vineet Jain, Sr. Advocate with
Mr. Pravin Vyas.
Mr. Baljinder Singh Sandhu with
Mr. Ankur Limba and
Mr. Chirag Kalani.
Mr. Umesh Kant Vyas.

For Respondent(s) : Mr. Arun Kumar, PP with
Mr. C.P. Marwan.
Mr. Moti Singh and
Mr. Rahul Rajpurohit with
Mr. Chayan Bothra (for the
complainant).
Mr. Prakash Kumar Sharma, ASP,
SOG, Jaipur present-in-person.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

20/08/2024

1. These are anticipatory bail petitions moved on behalf of the petitioners in relation to FIR No. 631/2019 registered at Police Station Jawahar Nagar District Sri Ganga Nagar for the offences punishable under section(s) 420, 406 and 120B of the IPC and Section 23 of the Forward Contracts (Regulations) Act.

2. I may briefly refer to relevant aspects of the case as emerging from F.I.R. lodged on 22.12.2019, which *inter alia* are that complainant M/s. Ganpati Multi Commodities Business (India) Pvt. Ltd. is engaged in business of commodity brokerage with memberships in NCDEX and MCX. Dr. Jitendra Mittal is director of the company. The company facilitates exchange-related services as a broker to its customers. NCDEX and MCX provide online trading platforms for commodity contracts, where any buyer or seller can place their orders through a broker and these orders are



executed on the exchange's system. The exchange deposits an upfront margin in advance from clients through its broker prior to placement of orders and also collects additional margin money on a daily basis through the broker. Since its inception, the complainant company has maintained a high reputation in market with a turnover of approximately Rs. 12,556 crores in the financial year 2018-19.

3. It is stated that all the six petitioners as detailed in the FIR, belong to same family. They opened six commodity trading accounts with complainant in their individual names as well as in the name of their firms. The specific details of these accounts are also mentioned in the FIR. It is alleged that from the very beginning, intention of petitioners was to make profits only and not to make-up losses. In last week of September 2019, there was a significant fluctuation in prices of castor seed commodity on the exchange. The prices of castor seed contracts were consistently hitting lower circuit since 25.09.2019, which continued for more than a week. Due to decline in prices, petitioners were incurring daily losses in their trading accounts. On 25.09.2019, there were transactions worth Rs. 700 crores on the exchange for trading of castor seed, out of which the petitioners had taken a buying position of Rs. 150 crores. The petitioners were repeatedly asked by the complainant to deposit the required margin money. Due to continuous losses incurred by the petitioners in trading of castor seed as well as failure to maintain/deposit required margin in their trading accounts, the



Exchange squared of all trading transactions of the petitioners to cover up losses and adjusted/forfeited the losses incurred by petitioners from margin money of complainant and its other 120 clients. As on 30.09.2019 complainant, on his behalf had maintained a huge amount of margin money to the Exchange from his own sources as well from sources of his 120 other clients. The petitioners have dishonestly and fraudulently cheated the complainant and his clients amounting to approximately Rs 40.04 crore by 15.10.2019, causing the complainant's entire business to come to a halt and resulting in significant damage to the complainant's goodwill as well as ruining of clients of complainant. When petitioners were asked to deposit or settle the liability, they refused and started threatening the complainant.

4. It is further stated that the petitioners, with a view to wriggle out their liability, have also disposed of their immovable properties to their near relatives so as to frustrate and defeat any Court/Arbitrator order, which might entitle the complainant to recover said amount from the properties of the accused. Accused have committed offences punishable under Sections 420, 406 and 120B of the IPC. Accused have also threatened to commit suicide and leave a suicide note against the complainant. On the basis of aforesaid report, a formal FIR was registered against the petitioners and matter is under investigation by Special Operation Group of Rajasthan Police.

5. To begin at the beginning Shri Veenit Jain learned Senior Advocate, Shri Baljinder Singh Sandhu learned Advocate, Shri



Praveen Vyas and Shri Umesh Kant Uyas learned counsels representing petitioners have fervently argued that looking to the facts of the present case, none of the ingredients of offence under Section 420 of IPC are fulfilled and the offence under Section 421 is bailable one for which, even if it is assumed to have been committed, the petitioners cannot be arrested. It is argued that petitioners have already joined investigation and their custodial interrogation is not required; that there are no allegations of petitioners tampering with evidence and nothing is to be recovered from them. The petitioners are apprehending their arrest in a false case, whereas dispute between the parties is simply a money recovery matter of civil nature.

6. First and prime argument of learned counsels for the petitioners is that petitioners cannot be held responsible for adjusting/forfeiting margin money of the complainant and its clients by the Exchange. Petitioners had informed the complainant on mobile phone on 24.09.2019 itself, to square of their position in castor seed commodity. On that day, price of contracts of castor seed were not in lower circuit, so the complainant could have squared of the petitioner's position, which he failed to do. Subsequently, on 26.09.2019 the complainant sent an email to the petitioners acknowledging receiving of instructions on mobile phone to square of their position. However, to conceal his failure, the complainant did not mention date of mobile phone conversation which took place and instead asked for confirmation of the mobile conversation, which was unwarranted. On this basis,



it is argued that the complainant could have prevented the losses by squaring of the petitioners' positions on 24.09.2019 itself. Petitioners have accused the complainant of causing losses of their margin money and argued that petitioners cannot be held responsible for the losses incurred to complainant after the 24.09.2019. It is also contended that due to the complainant's said failure to act, the margin money of the petitioners has been wiped out.

7. The second argument of learned counsels for the petitioners is that trades of castor seed contracts executed by the complainant were unauthorized as they were carried out by the complainant without instructions and authorisation of the petitioners therefore, the petitioners cannot be held responsible for the consequences of those trading contracts.

8. The third argument of the learned counsels for the petitioners is that it was obligatory for the complainant to have squared of the petitioners' open positions immediately upon the shortfall of margin money. The complainant failed to discharge this obligation. Therefore, the losses incurred by the complainant due to his own failure cannot be shifted to the petitioners.

9. The fourth argument of learned counsel for the petitioners is that before filing of the present F.I.R., various civil suits and claims have already been instituted between the parties and arbitration proceedings had commenced to resolve the dispute. The award passed against the petitioners by the arbitrator has also been challenged in the competent court. Additionally, the complainant



has also filed a suit in the civil court to cancel various gift deeds executed by the petitioners concerning their immovable properties. The dispute that arose between the parties pertains to a commercial transaction, which is a matter of civil nature and any remedy can be obtained only through the civil court. The business loss that the complainant has suffered cannot be recovered through criminal proceedings and present F.I.R. has been filed solely to create illegal pressure upon the petitioners, which is merely an abuse of process of criminal law, he argued.

10. The fifth argument of learned counsels for the petitioners is that transfer of properties by the petitioners cannot be considered a crime. The properties of the petitioners are not the subject matter of the dispute in this case nor were they mortgaged to the complainant or to the Exchange. Therefore, to protect their personal liberty, an order of anticipatory bail may be passed in favour of the petitioners.

11. From the other side, learned Public Prosecutor for the State assisted by Shri Moti Singh, learned counsel for the complainant has strongly objected to the submissions made by learned counsels for the applicants and submitted that the petitioners were bound to comply with the terms and conditions of the Commodity Trading Account Contract which they have failed to do. After the said dispute arose between the parties, it was brought before an arbitrator and not only the arbitrator but also the Appellate Arbitral Tribunal had passed the award against the petitioners which carries the weight of a decree of a civil court.



Petitioners have been ordered to pay the complainant a total amount of approximate Rs. 37.75 Crores with 10% annual interest from January 2020. Hence, the civil rights of the parties have already been determined and now it remains to hold the petitioners accountable for the offences committed by them arising out of their crime as well as to ensure that they are punished accordingly.

12. It is further argued that petitioners also had the facility of internet-based trading for their account, hence if they wanted, they themselves could have closed their positions by doing online trading, since all the previous transactions were also done online by the petitioners themselves. During the period between 30.11.2019 to 03.12.2019 the petitioners have transferred 15 of their immovable properties to their close relatives with the intention of thwarting the execution of order to be passed by the arbitrator or the civil court against the petitioners and also to thwart the recovery from them. This was clearly done with the intention of cheating the complainant.

13. It is further argued that there are serious allegations against the applicants and on the basis of material collected so far, investigation officer has reason to believe that petitioners are guilty of offences alleged. Learned Public Prosecutor has vehemently submitted that in absence of custodial interrogation of petitioners, investigation in this case cannot be taken to its logical conclusion qua the proceeds of crime therefore, in view of nature and gravity of offence, custodial interrogation of



petitioners is essential. Lastly, it was urged that benefit of anticipatory bail should not be accorded to the petitioners.

14. I have mulled upon the arguments advanced by both the parties and have given thoughtful consideration to the material placed on record.

15. Determining the parameters in granting anticipatory bail, Hon'ble the Supreme Court in ***Bhadresh Bipinbhai Sheth vs State of Gujarat*** reported in **(2016) 1 SCC 152** after analyzing the entire law has observed as under: -

- (a) *The nature and gravity of the accusation and the exact role of the petitioners must be properly comprehended before arrest is made;*
- (b) *The antecedents of the applicant including the fact as to whether the petitioners have previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (c) *The possibility of the applicant to flee from justice;*
- (d) *The possibility of the likelihood of petitioners to repeat similar or other offences;*
- (e) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (f) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (g) *The courts must evaluate the entire available material against the petitioners very carefully. The court must also clearly comprehend the exact role of the petitioners in the case. The cases in which the petitioners is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*



- (h) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the petitioners;*
- (i) *The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (j) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the petitioners in entitled to an order of bail.*

16. Applying the afore-noted dictum to the instant case and after having heard both the sides at length and on perusal of the case-diary as well as material on record, it appears that the petitioners are bound by the terms and conditions of the contract of trading in commodities. Complainant was also bound by the terms, conditions and his obligations towards Exchange in respect of his brokerage contract. While opening their commodity trading accounts with the exchange, petitioners agreed to bear all the obligations that could arise from the contracts they entered into. The complainant was acting simply as a broker and provided services only to the petitioners for the trades carried out by them. Thus, the complainant was only a service provider.

17. As far as the first argument of petitioners directing the complainant on phone to square of their positions on 24.09.2019 is concerned, prima facie, there is no evidence on record to suggest that the petitioners made transactions solely by giving



instructions to the complainant over the telephone. Instead, evidence shows that petitioners themselves were, from time to time, executing trades in commodities on internet-based trading platform.

18. It is an admitted fact that petitioners held long positions in castor seed contracts on 24.09.2019. It is also undisputed that castor seed contracts were locked at lower circuit on the NCDEX platform from 25.09.2019 until 03.10.2019. Additionally, petitioners did not raise the plea at the first available opportunity before the Arbitrator or Appellate Arbitral Tribunal that they had instructed the complainant on the 24.09.2019 via a mobile conversation to square of their positions. The petitioners have also not submitted any call detail records or recordings of verbal conversations to substantiate that any such conversation took place between petitioners and the complainant on the 24.09.2019. Moreover, given that the petitioners had the facility of online trading and could have squared of their trades through online transactions themselves, there is no plausible reason why they would ask the complainant over the telephone to do so instead of taking immediate action themselves and mitigate the losses. Therefore, being an afterthought, this argument is no longer tenable because if had been so, the petitioners would have pleaded it before the arbitrator or Appellate Arbitral Tribunal itself, which he did not.

19. The petitioners' stand that they directed the complainant on 24.09.2019 over the mobile phone to square of their positions



prima facie, appears to be a fabricated story and an afterthought. This claim is contradicted by an email dated 26.09.2019 sent by the petitioners to the complainant, in which they admitted their liability to pay the balance amount debited to their ledger account but expressed their inability to pay it. This email was observed by the Appellate Arbitral Tribunal in para number 6.13 of its award dated 21.10.2021.

20. In paragraph 14 of above award passed by the Appellate Arbitral Tribunal, it is revealed that in an email dated 26.09.2019 sent by petitioners to the complainant, the petitioners admitted that in the morning of 25.09.2019 they became aware of holding a long open position in Castor Seed contracts. They also acknowledged the losses incurred due to market volatility, which caused the transactions of Castor Seed contracts to be locked in the lower circuit, resulting in significant losses to him. This email also read that: -

"Due to seller cap in the last 2 days, we are unable to square of our position in Castor seed that is why we are not able to make the payments on time."

21. It is noticed that the petitioners have concealed these emails from this court and has not come before the court with clean hands. Rather, they have attempted to misguide this court by bringing the facts before the court which are clearly contrary to their own admissions in previous proceedings. As per the email dated 26.09.2019 of the complainant, petitioners may have had a



mobile conversation with a complainant regarding squaring of their positions but Prima facie it is not proved that mobile phone conversation took place on 24.09.2019 itself. If such a mobile phone conversation had taken place on 24.09.2019, the language of subsequent emails from the petitioners would have been different. The subsequent emails of petitioners would not have contained the language accepting liability. In such a situation, petitioners are not found to be entitled to have discretion of granting anticipatory bail in their favour. The grounds for bail taken in this petition prima facie appears incorrect, false and contrary to the grounds taken by them in the earlier proceedings. Therefore, affidavit submitted in support of present petition also appears to be prima facie false.

22. As for the second contention of the petitioners regarding unauthorized transactions by the complainant in their trading accounts, in the opinion of this Court, this contention is also not tenable. As per the petitioners themselves, they had asked the complainant to square of their long open positions in Castor Seed contracts. This fact shows that they had knowledge of all their open positions. Besides, petitioners were, from time to time, executing trades in commodities on the internet-based trading platform. The Exchange certainly sends-out summaries of trades, positions, financial status of accounts and a variety of other reports to its trading clients on a daily basis as well as at regular intervals through electronic means.



23. The emails sent by the petitioners reveal that they were aware of their long open positions in castor seed contracts held in their respective trading accounts as on morning of 25.09.2019 and they also knew about the losses being incurred. Therefore, it cannot be assumed that the complainant was making unauthorized transactions in the petitioners' accounts without their knowledge. If this had been the case, the petitioners would have immediately protested and stopped the complainant from doing so. This plea also appears to be an afterthought intended to wriggle out of their obligations to make up the margin money and the payment towards losses demanded by the complainant. This clearly negates the claim that the complainant made any trades in the petitioners' trading accounts without their authorization.

24. As far as the third argument regarding the complainant's failure to square of the petitioners' position after the exhaustion of the margin money, this argument is also not tenable in the opinion of this Court because when the castor seed transactions were locked in lower circuit by market forces, which continued for more than a week and as the petitioners' margin money started draining, neither the complainant nor the petitioners could have square of the open positions. While the lower circuit was in effect, it was beyond complainant's control.

25. Now the fourth argument of the petitioners that present is a civil dispute, is considered. No doubt that the dispute between the parties is a matter relating to a commercial contract and recovery



of money but this is not the absolute situation and there is an another side to the coin as well.

26. In certain cases, the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender.

27. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. Many a cheating are committed in the course of commercial and also money transactions. Illustration "F" set out under Section 415 of the Indian Penal Code is worthy of notice:-

(F) "A" intentionally deceives "Z" into a belief that "A" means to repay any money that "Z" may lend to him and thereby dishonestly induces "Z" to lend him money, "A" not intending to repay it. "A" cheats."

28. In the present case, the complainant was induced by the petitioners to believe that they would maintain sufficient margin money in their commodity trading accounts and in the event that the complainant had to make any payment or incurred any loss on behalf of the petitioners due to their failure to maintain the margin money, the petitioners would repay the complainant for the same. The complainant, later realised that the intentions of the





petitioners were malafide. Admittedly, petitioners refused to make-up the losses. As a result of this act (nonpayment against required margin money) of the petitioners, the complainant had to suffer the consequences, since the margin money of complainant and his clients was reduced while adjusting for the losses of petitioners. There was no reason why the complainant and his clients should bear the losses incurred by the petitioners.

29. Proceed of the crime is amounting to the tune of Rs. 37.75 Crores plus 10% interest payable from January 2020. Such facts would *prima facie* make out a case for investigation by the authorities. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. Present transaction between the parties may have involved a breach of contract but ingredients of offence of cheating is also *prima facie* fulfilled. A wrongdoer cannot have right to dictate that the complainant should avail his remedy according to the wrongdoer's convenience.

30. It is borne out from record that complainant was required to fulfill his obligations towards the National Commodity Clearing Limited (NCCL) on behalf of its defaulting clients including that of petitioners. The petitioners failed to maintain the required margin money, therefore, the complainant was required to meet his obligations towards NCCL. As a result of the financial constraints faced by the complainant, all the open positions of the complainant's clients were closed and the margin money of the complainant as well as that of his other clients was adjusted by



the NCCL. This led to the end of the complainant's commodity broking business. Consequently, the complainant had to suffer a substantial financial loss and damage to his goodwill solely due to the fraud and cheating committed by the petitioners.

31. Now coming to the fourth argument of petitioners, this Court is of the view that no person can be allowed to become unjust rich and thrive upon the goodwill and reputation of others which is got established over a period of years. If a person has legally speculated through someone else, then he and his properties are responsible for the consequences and later he cannot save his properties and remained rich at the cost of others and by ruining them. The petitioners knew that they are engaged in trading of high risk forward commodity market and that they could incur huge losses anytime. Therefore, due to fear of losses, petitioners made a family settlement amongst themselves regarding their immovable assets in advance in the year 2015 itself and when the right time came, they implemented said family settlement while disposing of their immovable properties in favour of their near relatives. That clearly reveals petitioners' fraudulent, dishonest and deceptive intention and object. Therefore, disposal of properties made by the petitioners were not natural transactions but had direct nexus with petitioners' business of commodity trading and its consequences.

32. In my view, since the case is at the threshold and the investigations are underway, it will be practically scuttling the investigation in case the anticipatory bail is granted to the



petitioner which would create hurdle in arriving at the truth. Prima-facie the petitioners herein are involved in a serious crime involving a huge amount.

33. In view of the aforesaid settled principles, the facts and circumstances of the present case and the case set up against petitioners in its entirety and the allegations leveled against them, this Court is not inclined to grant the anticipatory bail to the petitioners.

34. Consequentially, the present anticipatory bail applications are devoid of merit and accordingly dismissed. It is clarified that whatever is discussed or observed hereinabove is only a prima facie view of this Court and shall not tantamount to any expression or opinion on the merits of the case.

(RAJENDRA PRAKASH SONI),J

Mohan/-