



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO. 126 OF 2021
IN
(C. R. No. 26 of 2021 of Kandivali Police Station)**

1) Bindu Lalchandra Tiwari,
Aged about 38 years, Occ.: Profession.

2) Dr. Lalchandra Badriprasad Tiwari,
Aged about 42 years, Occ.: Service.

Both are residing at: B-18/B-302,
Gulshan, Gokuldharm, Goregaon (East),
Mumbai-400063.

..Applicants.

V/s

**The State of Maharashtra (Through
Kandivali Police Station)**

..Respondent.

Ld. Adv. Murtaza Najmi with Adv. Rakesh Mishra, for the applicants.
Ld. APP Mrs. Usha Jadhav, for the State.
Ld. Adv. Jagtap alongwith Adv. Mehrotra, for the intervenor.

**CORAM : SHRI L.S. CHAVAN,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.10.**

DATE : 02nd March, 2021

ORAL ORDER

This is an application filed by the applicants under Section 438 of the Code of Criminal Procedure 1973, for granting anticipatory bail in connection with Crime No.26/2021 registered with Kandivali

Police Station for the offence punishable under Sections 419, 420 r/w 34 of the Indian Penal Code.

2. The factual matrix of the prosecution case is that, during the period of 2015 to 2017, the applicants without having any legal knowledge impersonated themselves as an advocates and without any legal rights, advised to the Raghuleela Mall and cheated the Raghuleela Mall Society to the tune of Rs.42,19,725/-. Therefore, the complainant lodged the report to Kandivali Police Station against the applicants. On the basis of report of complainant, Crime No. 26/2021 came to be registered against them for the offence punishable under Sections 419, 420 r/w 34 of the Indian Penal Code.

3. The learned advocate for the applicants argued that, the applicant no.1 is a practising advocate duly enrolled in the Bar Council of Maharashtra & Goa. Prior to enrollment in the Bar Council of Maharashtra & Goa, she used to carry on the proprietorship of Co-operative Societies Consultancy Services in the name and style of M/s Bindu Tiwari & Associates. The applicant no.2 is a husband of applicant no.1. He is Doctorate in Science and possesses the Law Degree from University of Mumbai. Both the applicants are members of Raghuleela Mall Society since 2015. In July 2015, the Office Bearers of the Raghuleela Mall Society approached to the applicant no.1 for taking the guidance in the matter related to their society issues and requested the applicant no.1 to render their services on monthly remuneration basis. The Office Bearers of the society held their Special General Body Meeting and appointed the applicant no.1 to render consultancy and management services to the said Mall. The applicant no.2 was present to the said meeting and had cleared to the General Body Meeting that,

none of the applicants are practising advocates. But, the applicant no.1 provides Consultancy and Management Services to the Co-operative Societies as she is holding G.D.C & A. Degree.

4. During the period of July 2015 to August 2016, the applicants rendered their efficient services and legal opinion for initiating civil and criminal proceedings against the wrongdoer occupants of the society who have encroached the larger portion of the said Mall Society. Accordingly, it was decided by the society to initiate the legal proceedings against the wrongdoer encroacher's before the Competent Court of Law. During the period of 2016-2017, the Office Bearers of the said Mall Society had executed Irrevocable Special Power of Attorney in favour of the applicant no.2 thereby authorizing him to represent him as well as the said Mall Society before the competent authority. The said power of attorney was duly notarized before the Notary Officer. The applicant no.2 had never made impersonation to the society that he was an advocate. It is argued that, the applicants are the innocent persons. They have been falsely implicated in the abovesaid crime by the complainant with intend to destroy their reputation. Nothing is to be recovered from them. Therefore, their custodial interrogation is not required for any purpose. Hence, requested for granting pre-arrest bail to the applicants. They relied on following decisions-

- 1. Union Of India & Anr. Vs. Deoki Nandan Agarwal [1992 AIR 96]**
- 2. Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr.[Appeal (Civil) 5732/2007 decided on 06/12/2007]**
- 3. Harshada Bharat Deshmukh Vs. Bharat Appasaheb Deshmukh [Writ Petition (Stamp) No.1788/2018]**
- 4. Arasmeta Captive Power Co. Pvt. Vs. Lafarge India P. Ltd. [Civil**

Appeal No.11003/2013 (arising out of SLP (Civil) 29651/2013]

5. Mr. Louis De Raedt & Ors. Vs. Union Of India & Ors.[1999 AIR 1888]

6. Sharat Babu Digumarti Vs. Govt. Of NCT Of Delhi [Criminal Appeal No.1222/2016 (Arising out of SLP (Cri.) No.7675/2015)]

7. Commercial Tax Officer Vs. M/s Binani Cement Ltd. [Civil Appeal No.336/2003]

8. Forbes Forbes Campbell And Co. Vs. Commissioner Of Income-Tax [1993 (63) ELT 23 Bom.]

9. Jacob Mathew Vs. State of Punjab & Anr. [Appeal (Criminal) No.144-145/2004]

10. Rai Bahadur H.P. Banerjee Vs. Commissioner Of Income-Tax [1941 9 ITR 137 Patna]

5. I have gone through all the decisions relied by the applicants. But, at this stage these are not helpful for deciding the anticipatory bail application.

6. Per contra, the learned APP for the respondent duly assisted by ld. Adv. Jagtap alongwith ld. Adv. Mehrotra strongly opposed for granting pre-arrest bail to the applicants by contending that, the applicants without having any legal knowledge and without Sanad impersonated themselves as an advocates and by giving wrong advice cheated the Raghuleela Mall Society to the tune of Rs.42,19,725/-. The applicant no.1 was representing herself to be owner of law firm namely M/s Bindu Tiwari & Associates and the applicant no.2 was representing himself to be practising advocate having the knowledge of law. After inquired, society came to know that the applicants are not qualified advocates nor possessed the Sanad for practising in the court.

Therefore, society by issuing letter dated 17.04.2017 discontinued their service as a legal advisor. It is argued that, the applicant no.2 had appeared before the Honble High Court in Writ Petition No. 95/2016 as an advocate. Whereas, he represented himself to be a legal advisor of the society in Anticipatory Bail Application No.1683/2017 filed before the Honble High Court and same is recorded in the order. The copies of order of Writ Petition No. 95/2016 and Anticipatory Bail Application No.1683/2017 is placed on record. Further, it is argued that, the applicants have caused wrongful loss to the society to the tune of Rs.42,19,725/-. Therefore, their custodial interrogation is required for recovery of amount. Lastly, it is argued that the applicant no.2 is having criminal antecedent, if he granted the anticipatory bail then there is possibility to tamper with prosecution evidence. Hence, requested for rejecting the application. They relied on following decisions-

1. **Bar Council of India Vs. A.K. Balaji & Ors. [Civil Appeal No. 7875-7879 of 2015.]**
2. **Lawyers Collective Vs. Bar Council of India & Ors.**
3. **Ex.Capt. Harish Uppal Vs. Union of India & Anr. [(2003)2 SCC 45]**
4. **Vinay Poddar Vs. The State of Maharashtra [Criminal Application No.2862 /2008]**

7. The Hon'ble Apex Court in the case of **Bar Council of India Vs. A.K. Balaji & Ors** in Paragraph no. 40 held that, *"We have already held that practicing of law include not only appearance in court but also giving of opinion, drafting of instruments, participation in the conferences involving legal discussion. These are parts of non-litigation practice which is the part of practice of law. Scheme in Chapter – IV of the Advocates Act makes it clear that advocates enrolled with the BAR Council alone are entitled to practice law, except as otherwise provided in any other law"*.

8. The Hon'ble Bombay High Court in the case of ***Lawyers Collective Vs. Bar Council of India & Ors*** in paragraph no.48 held that, “ In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocates on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) person practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the person practising before the Court but it is also intended to apply to person who are practising in non-litigious matters outside the Court.”

9. In paragraph no. 55 of the said judgment, it is observed that, “It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to person practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non litigious matter without being enrolled as an advocate. There is no merit in the above argument, because there is distinction between a bureaucrat drafting or giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents / giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all person practising the profession of law be it in litigious matters or

in non-litigious matters within the purview of the 1961 Act.

10. *Further in paragraph no. 58 it is observed that “ It may be noted that rule 6(1) in chapter III Part VI of the Bar Council of India Rules framed under section 49(1) (ah) of the 1961 Act provides that an advocates whose name has been removed by an order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practise the profession of law either before the Court and authorities mentioned under section 30 of the 1961 Act, or in chambers, or otherwise. The above rule clearly shows that the chamber practise, namely, practise in non litigious matters is also within the purview of the 1961 Act.”*

11. *In paragraph no. 60 it is observed that, “For all the aforesaid reasons, we hold that in the fact of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that expressions ? to practise the profession of law? In section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matter as well as person practising in non-litigious and, therefore, to practise in non-litigious matters in India, the respondent Nos.12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.”*

12. *The Hon’ble Apex Court in the case of **Ex.Capt. Harish Uppal Vs. Union of India** in para no 34 held that, “ The right of advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart form appearing in courts he can be consulted by his clients, he can give his legal opinion whenever sought*

for, he can draft instruments, pleading, affidavit or any other documents, he can participate in any conference involving legal discussion, he can work in any office of form as a legal officer, he can appear for clients before an arbitrator etc.”

13. The Hon’ble Bombay High Court in the case of **Vinay Poddar Vs. State of Maharashtra** in Paragraph no.13 held that, *“When an applicant for anticipatory bail is considered, the police may not place all factual details before the Court as the investigation in most of such cases is at a preliminary stage. Therefore, some role can be played by the complainant by pointing out factual aspects. In the circumstances, it is not possible to hold that the first informant or the complainant cannot be heard in an application for anticipatory bail. When the complainant appears before the Court in the course of hearing of an application for grant of anticipatory bail, the Court is bound to hear him.”*

14. In view of the rival submission of both the sides, it appears that there is a legal issue arises before this court regarding eligibility/qualification of the applicants who render the services on remuneration to the Raghuleela Mall Society. It is seen that, the Raghuleela Mall Society had issued appointment letter to the applicant no.1 who render the services to the society and in lieu of that, they paid remuneration to the applicants. Therefore, at this stage it can be assumed that before issuance of appointments letter all the process including interviews was conducted by the Office Bearers and the managing committee members for appointing the applicant no.1 to render her service for Raghuleela Mall Society. Further, it is seen that the applicant no.2 is having the law degree issued by the University of Mumbai in the year 2007. It is also seen that, during the

period of 2016-2017, the Office Bearers of the said Mall Society had executed Irrevocable Special Power of Attorney in favour of the applicant no.2 dated 22.11.2016 thereby authorizing him to represent him as well as the said Mall Society before the competent authority. This fact make it clears that, on the basis of Special Power of Attorney the applicant no.2 was performing his duty. Now, question is that, whether he appeared as an advocate without possessing the Sanad for practising in the court or not? and secondly whether the applicants without having any legal knowledge, impersonated themselves as an advocates to the Raghuleela Mall and by giving wrong advise cheated the Raghuleela Mall Society to the tune of Rs.42,19,725/- or not is the matter of trial. At this stage, it would not be proper to arrive any conclusion regarding the merit of the case.

15. As per the contention of the APP, the custodial interrogation of the applicants is required for making an inquiry about their legal firm and legal qualification. But, only for making an inquiry about the legal firm and their legal qualification, in my view their custodial interrogation is unwarranted. The applicants are ready to co-operate the Investigating Officer at any time and also ready to abide any condition imposed by the court while enlarging them on pre-arrest bail. Considering the nature of allegation against the applicants and the role assigned by them, their custodial interrogation is unwarranted. Therefore, it would be proper to grant them anticipatory bail. Hence, I pass following order.

ORDER

1. The Anticipatory Bail Application No.126/2021 is hereby allowed.
2. In the event of arrest of the applicants namely **1) Bindu**

Lalchandra Tiwari 2) Dr. Lalchandra Badriprasad Tiwari, be released on bail on executing P.R. Bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with one or two sureties of like sum in connection with Crime No. 26/2021 registered with Kandivali Police Station for the offence punishable under Sections 419, 420 r/w 34 of the Indian Penal Code on following conditions-

- i) They shall attend the Kandivali Police Station on every Sunday from 10.00 am to 01.00 pm till filing of charge-sheet and co-operate to the IO.
- ii) They shall not tamper with prosecution evidence.
- iii) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade them from disclosing such a fact to the court or to any police officer.
- iv) They are directed to furnish their proper local & native address and their contact numbers to the Kandivali Police Station.
- v) Inform to the Kandivali Police Station.

3. The Anticipatory Bail Application No.126/2021 stands disposed of accordingly.

(L.S. CHAVAN)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 02/03/2021

Dictated on : 02/03/2021
Transcribed on : 08/03/2021
Signed by HHJ on : 18/03/2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
20/03/2021 at 04.00pm	Mrs. J.S. Gawai
UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
Name of Judge (with Court room no.)	HHJ Shri L.S. Chavan, City Civil & Sessions Court, Borivali Div., Dindoshi. (C.R.No.10)
Date of Pronouncement of JUDGEMENT/ORDER	02/03/2021
JUDGEMENT/ORDER signed by P.O. on	18/03/2021
JUDGEMENT/ORDER uploaded on	20/03/2021