

**IN THE COURT OF THE XXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE, Mayo Hall, Bangalore, [CCH.NO.29]**

Present :- Sri. K.M. Rajashekar, B.Sc., L.L.M.,

Dated this the 23rd day of August 2021

Crl.Misc.No.25889/2021

Petitioner: Naveen Chandra Joshi
@ Navin Chandra Joshi,
S/o Sri. Jagdish Prasad Joshi,
Aged about 49 years,
Residing at
Casanova, Unit No.3,
Plot No.77, Sector 26,
Parshik Hill,
Near Dhamma Vipula,
CBD Belapur,
Navi Mumbai-400 614,
Maharastra State.

(By pleader : Sri. Rudresha S.L)

V/s

Respondent: The State of Karnataka,
Pulakeshinagar Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The Petitioner/Accused has approached this Court under Section 438 of Cr.P.C. for grant of anticipatory bail in the event of his arrest in Crime No.260/2021 of Pulakeshinagar Police Station,

for the offence punishable under Section 420 r/w Section 34 of Indian Penal Code (I.P.C.).

2. The allegations are that, the Complainant is doing business of Landscaping Contract Business. In the month of January 2016 the Petitioner contacted the Complainant and advised him to invest in the Traffic System Digitalize Project at Afghanistan. Initially the Complainant refused to invest money. But, on the request of the Petitioner he has transferred money to the Bank Accounts of Petitioner, Prakash Shah and Pinki Shah on various dates. Thereafter, the Complainant and the Petitioner went to Afghanistan to pursue the said project. In the month of June 2016 the Petitioner had introduced Software Developer Unify Labs Pvt., Ltd., owner Mr. Srikirana Pallam and Mr. Srinivas at Kasavaahalli, Bangalore to implement the Digitalization of the Traffic System. But, they have not developed any software. Instead they themselves have started project with the Afghanistan Government higher officials and have not returned money to the Complainant. Thereafter, as the Complainant was in need of money, Petitioner introduced one Ashish Anil Rakode a financier at Thane Mumbai. They entered into an agreement and the Complainant had paid the processing fee of Rs.38 lakhs to

Mr. Ashish Anil Rakode and he has issued cheque, but, when the Complainant checked the bank account, there was no amount in the bank account of Ashish Anil Rakode and he has not returned the finance amount and processing fee to the Complainant and thereby committed the aforesaid offence.

3. The Petitioner has contended that, he is innocent of the charges leveled against him and he has not committed any offence much less the alleged one. The Petitioner apprehending the serious threat of arrest and illegal detention by the Respondent Police. There is no prima-facie complaint against the Petitioner. The allegations made in the complaint clearly show that there is no specific allegation against the Petitioner, hence on the very ground itself the Petitioner should be treated as an innocent, till the guilt is proved. The complaint lodged by the Complainant is after lapse of 4 years. The Complainant has not sent any legal notice to the Petitioner till date regarding the aforesaid allegations. The Petitioner hails from a respectable family. The Petitioner/Accused and his family members will be put to hardship in case of his arrest and detention by them. The Petitioner/Accused is ready to abide by the conditions imposed by the Court. Hence, sought for bail.

4. The learned Public Prosecutor seriously opposed the bail application on the ground that, the petition is not maintainable either in law or on facts. Absolutely no grounds were made out for granting bail. There are sufficient materials available on record to hold prima-facie case against the accused person in respect of the alleged offences. The investigation of this case is still under progress and if the accused person was enlarged on bail, there are every possibility of absconding of accused, repetition of similar offences, tampering the prosecution witnesses and he may not be available for the trial, that may be hamper the investigation and trial of this case. Hence, sought for dismissal of the bail applications.

5. Heard the arguments of both sides and perused the records.

6. That on the above said facts, the following points arise for my determination are:-

1. Whether the Petitioner has made out sufficient grounds for granting anticipatory bail U/S 438 of Cr.P.C.?
2. What order?

7. My findings on the above points are as under:

Point No.1: In the Affirmative;

Point No.2: As per final order for the following:

REASONS

8. **Point No.1** :- Upon going through the materials available on record, it is seen that, there is a financial transaction between the Complainant and the Petitioner in respect of business to be set up at Afghanistan. Viewed at any angle this appears to be purely contractual obligation and civil in nature. As rightly argued by the Petitioner counsel at the most there may be breach of contractual obligation and the Complainant has remedy before proper forum. The alleged offence is triable by the Magistrate Court. The complaint filed by the Complainant is after lapse of four years, the reason for delay in filing the complaint is not properly explained. The Petitioner/Accused apprehends his arrest by the Respondent Police, Petitioner/Accused person and his family members will be put to hardship in case of his arrest and detention by them. Under the circumstances, I am of the opinion that, Petitioner/Accused may be enlarged on bail on imposing certain appropriate stringent conditions.

9. Further, it is pertinent to note that their Lordships of Hon'ble Supreme Court in the decision reported in **2014(3) KCCR 1977 (SC) between Arnesh Kumar Vs., State of Bihar and another** was pleased to hold as under:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law-makers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

The said proposition of law is squarely applicable to the case on hand. Under the facts and circumstances of this case and considering the fact that, there is a financial transaction between the Complainant and the Petitioner and also considering the probable hardship that may be caused to the Petitioner/Accused and his respective family members in his absence, I am of the opinion that the Petitioner has made out grounds for granting anticipatory bail. However, the apprehension of the prosecution regarding the non-availability for trial, tampering witnesses etc., could be easily met with by imposing appropriate stringent conditions. Under the facts and

circumstance of this case, I am of the opinion that Petitioner is entitle for bail also and it is deemed fit to grant the benefit of anticipatory bail to him. Accordingly, Point No.1 is answered in Affirmative.

10. **Point No.2**: In the light of above discussions, I proceed to pass the following:

ORDER

The petition filed U/S 438 of Cr.P.C., by the Petitioner/Accused is allowed.

In the event of his arrest, the Petitioner/Accused shall be enlarged on bail in Crime No.260/2021 of Respondent Police Station, on execution of personal bond for a sum of Rs.50,000/- (Fifty Thousand) along with a surety for the likesum, subject to following conditions:

- 1) The Petitioner/Accused shall not tamper with the prosecution evidence or witnesses in any manner and shall co-operate with the investigation.
- 2) He shall not commit similar offences in future.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **23rd** day of **August 2021**).

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

Order pronounced in the open Court
(vide separate order)

O R D E R

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[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.