

MHCC020034722024



CNR NO.MHCC02- 003472-2024

IN THE COURT OF SPECIAL JUDGE (CBI) FOR GREATER BOMBAY

ANTICIPATORY BAIL APPLICATION NO.425 OF 2024

(RC 026/2023/A0032, CBI, ACB, Mumbai)

Merlin Menaga
Flat No. 401, 4th Floor,
Devine Shelter CHS,
Opp. Babasaheb Ambedkar School,
Dharavi, Mumbai- 400 017. .. Applicant.
V/s.

Central Bureau of Investigation,
Anti-Corruption Branch,
C-35A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 098.
Through PI, CBI, ACB, Mumbai. .. Respondent.

Appearance :

Adv. Kunal Nawale for applicant/accused.
SPP Nidheesh T.P for the respondent/CBI, ACB, Mumbai.

CORAM : H.H. THE SPECIAL JUDGE (CBI)
M.R.PURWAR
DATE : 27.03.2024 (C.R.NO.53)

ORAL ORDER

The case in hand is a peculiar case, wherein the prayer of the applicant/accused for grant of anticipatory bail is not objected by the CBI.

2. Applicant/accused has moved present application for grant of anticipatory bail under Section 438 of Code of Criminal Procedure (In short Cr. PC.) in connection with crime No. RC 026/2023/A0032, CBI, ACB, Mumbai registered with Central Bureau of Investigation (In short CBI) for the offence punishable under Section 120-B of Indian Penal Code (In short IPC) r/w. Section 7 and 7A of the Prevention of Corruption Act, 1988 (In short PC Act).

3. In short, it is the case of prosecution that on the basis of written complaint of Shri Jagadeeshwaran, Manager of Shri Vishal Krishna, a Film Actor of Tamil and Telugu Film Industry CBI, ACB, Mumbai has registered a case vide RC 026/2023/A0032 against M. Merlin Menaga and Others on 04.10.2023. It is alleged in the complaint that during the month of September, 2023 M. Merlin Menaga entered into a criminal conspiracy with Mrs. Jeeja Ramdas, Rajan M. and unknown Public Servants of Central Board of Film Certification, Mumbai and other unknown private persons to obtain bribe of Rs. 7,00,000/- to get the required censor certificate from CBFC, Mumbai for movie "Mark Antony" dubbed in Hindi. In furtherance of said criminal conspiracy, she initially demanded bribe on behalf of CBFC Mumbai officials amounting Rs.7,00,000/- from the complainant and

subsequently after negotiation with one Sh. Hari Krishna, Administrative officer of M/s. Vishal Film factory, Chennai, She accepted Rs. 6,54,000/- as bribe on behalf of CBFC Mumbai officials in two bank accounts of Mrs. Jeeja Ramdas and Sh. Rajan M. Thereafter on 26.09.2023, the required certificate was issued by CBFC, Mumbai for Movie "Mark Antony" dubbed in Hindi. The verification of complaint revealed that in addition to the above mentioned amount, Mrs. M. Merlin Menaga obtained 20,000/- on her bank account from the account of M/s. Vishal Flim Factory as coordinating fees for herself. Out of above mentioned bribe amount of Rs. 6,54,000/-, Rs. 6,50,000/- were immediately withdrawn in cash.

4. It is the case of the applicant/accused that she is law abiding citizen and permanent resident of given address. She is apprehending arrest in the above mentioned crime. Earlier she had filed ABA No. 2722/2023 which was subsequently not pressed by her. She had been served with notices under Section 41-A of Code of Criminal Procedure (in short Cr.PC.), which were complied. She has also got recorded her confessional statement before the ACMM Court, Mumbai under Section 164 of Cr.PC. Considering the extensive interrogation she seriously apprehends arrest. The entire case is based on the requirement of obtaining the certification for the release of Movie. The entire procedure is online. She was just facilitating the representative of M/s. Vishal Film Factory and coordinated amongst CBFC officers and M/s. Vishal Film Factory.

5. It is further case of the applicant that the offence under Section 7 of the P.C. Act is not attracted against her. On the date of the filing of the complaint no work was pending in the office of CBFC. The entire evidence is documentary and is already in custody of the CBI. No question of tampering arises. The CBI has already done extensive and thorough investigation. She had submitted all the relevant information to the satisfaction of the CBI. No question of custodial interrogation is there. Nothing is to be recovered from her. She is ready to abide with all the conditions. Hence, this application.

6. The CBI has submitted reply below Exh. 2. It is submitted in the reply that CBI has registered a case vide RC 0262023A0032 on 04.10.2023 on the basis of a complaint received from manager of Shri Vishal Krishna, a film actor of Tamil and Telugu film industry. During investigation of the case, notices under Section 41(A) of Code of Criminal Procedure were issued to the applicant/accused and she has reported to the Investigating Officer and disclosed the facts of the case as well as her role and role of others. The complicity on the part of applicant/accused was found and on the basis of her written request, her statement under Section 164(3) of Code of Criminal Procedure has been recorded before the Ld. ACMM, Mumbai, wherein she has accepted her role alongwith role of Kamlakar Kamble. However, the CBI has not objected the prayer of the applicant for grant of anticipatory bail.

7. It is argued by the Ld. Advocate Kunal Nawale for the applicant/accused that even though the CBI has given no objection for

grant of anticipatory bail, however, still the apprehension of arrest is there. According to him, it is to be seen as to whether the applicant is having reason to believe that she may be arrested on accusation of having committed a non bailable offence. Considering the reply of the CBI, he is not arguing on the merits of the case but restricting his arguments only on the point of apprehension of the applicant about arrest. He drew my attention towards paragraph Nos.5 to 7 of the application and submits that the CBI in the reply has not denied in respect of apprehension of applicant about arrest. In the reply the Prosecution has maintained the allegations against the applicant of committing a non bailable offence and therefore, apprehension exists. He prayed to allow the prayer as not objected by the CBI.

8. On the other hand, Ld. SPP Nidheesh T.P argued that the notices under Section 41(A) of the Code of Criminal Procedure has been issued to the applicant/accused and she has reported to the Investigating Officer and cooperated. Even her statement under Section 164(3) of the Code of Criminal Procedure before Ld. ACMM, Mumbai has been recorded. The Prosecution has no objection to grant anticipatory bail to the applicant/accused. Today, it cannot be said that the Investigating Officer will not arrest the accused as she is cooperating during investigation. However, tomorrow the applicant/accused may not cooperate to the Investigating Officer and thereby the Investigating Officer may require to invoke provisions of Section 41(A)(3) of the Code of Criminal Procedure to arrest the accused and it depends on further investigation.

9. I have given thoughtful consideration to the submissions advanced on behalf of both the sides. In the present application the point involved is, whether discretion of granting anticipatory bail is to be exercised in favour of applicant/accused or not.

10. Undisputedly, vide reply Exh.2 the CBI has given no objection for grant of anticipatory bail. However, at the same time the CBI has maintained the allegations against the accused in the reply in respect of commission of a non bailable offence. On 07.03.2024 the Ld. SPP has made a statement that till filing of reply Investigating Officer will not arrest the applicant/accused and such statement has been recorded below roznama dated 07.03.2024. In paragraph No.7 of the application the applicant/accused has pleaded about her apprehension and it is not specifically denied by the CBI in the reply Exh.2. In paragraph Nos. 5 and 6 of the application, the applicant/accused has pleaded about receipt of notices under Section 41(A) of the Code of Criminal Procedure and that she has got recorded her confessional statement before the ACMM Court, Mumbai under Section 164 of the Code of Criminal Procedure. Even though notices under Section 41(A) of the Code of Criminal Procedure have been issued however, where such person to whom such notices have been issued complies and continuous to comply with the notices, he/she shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers is of the opinion that he/she ought to be arrested. Therefore, even after issuance of notice the Investigating Officer under certain circumstance as enumerated under Section 41(A) of the Code of Criminal Procedure itself is having power to arrest.

11. During the course of arguments, the Ld. SPP has also made a submission that today, it cannot be said that the Investigating Officer will not arrest the accused as she is cooperating during investigation. However, tomorrow the applicant/accused may not cooperate to the Investigating Officer and thereby the Investigating Officer may require to invoke provisions of Section 41(A)(3) of the Code of Criminal Procedure to arrest the accused and it depends on further investigation.

12. The allegations against the applicant/accused are pertaining to the non bailable offence. In view of the above facts and circumstances, the applicant has made out the case that she has reason to believe that she may be arrested on accusation of having committed a non bailable offence.

13. On the above peculiar facts and circumstances, when the prayer for grant of anticipatory bail is not objected, the prayer deserves to be allowed on certain conditions. Thus, I pass the following order :

ORDER

1. Anticipatory Bail Application No.425/2024 is hereby allowed.
2. In the event of arrest in connection with crime No. i.e. RC026/2023/A0032, CBI, ACB, Mumbai registered with CBI, Mumbai for the offence punishable under Section 120-B of the IPC and Section 7, 7A of the PC Act, the applicant/accused Merlin Menaga, shall be released on executing PR bond and Surety bond of Rs. 50,000/- with one or more sureties in the like amount.

3. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court or to any police officer.
4. The applicant shall make herself available for interrogation/further investigation by the Investigating Officer as and when required on written intimation and shall co-operate for the investigation.
5. The applicant shall furnish her permanent residential address, present residential address, mobile number, e-mail address to the Investigating Officer and also shall notify any change therein to the Investigating Officer.
6. Anticipatory Bail Application No.425/2024 is hereby disposed off accordingly.

Mumbai:
Date: 27.03.2024

(M.R.PURWAR)
Special Judge (CBI)
Court Room No.53,
Gr. Bombay.

Typed on : 27.03.2024
Signed on : 27.03.2024

“Certified to be true and correct copy of the original signed order”.

27.03.2024
at about 3.30 PM.

(Pushpa Rajan Vengurlekar)
Stenographer (H.G.)
Court Room No.53

Name of the Hon'ble Judge : Shri. M.R.Purwar
(Court Room No.53)

Date of pronouncement of Judgment/Order : 27.03.2024.

Judgment/Order signed by Hon'ble Judge on : 27.03.2024.

Judgment/Order uploaded on : 27.03.2024.