

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPLICATION (BAIL) NO. 51 of 2014.**

Shri. Shyamkant Bhau Desai,  
son of Shri. Bhau Desai,  
43 years of age, Business,  
r/o. A-702,  
Runwal Heights LBS Marg,  
Mulund (w), Mumbai - 400080,  
Maharashtra State  
(Registered Addresses) ....Applicant.

Versus

1. STATE  
(Through PI attached to  
CID Economic Offence Cell)  
Panaji Goa.
2. The Public Prosecutor,  
Hon'ble High Court Complex,  
Panaji, Goa. ....Respondents.

Mr. Arjun F. Naik, Advocate for the applicant.

Mr. M. Amonkar, Additional Public Prosecutor for the respondents.

**Coram :- U. V. BAKRE, J.**

**DATE : 30<sup>th</sup> April, 2014.**

**ORAL ORDER :**

Heard Mr. Naik, learned Counsel appearing on behalf of the applicant and Mr. Amonkar, learned Additional Public Prosecutor appearing on behalf of the respondents.

**2.** The applicant, who apprehends arrest in Crime No. 19/2012 registered at CID Economic Offence Cell, Panaji- Goa for offence punishable under Sections 406 and 420 read with Section 34 of IPC, has filed the present application in anticipation of arrest.

**3.** One Mrs. Aparna Malvankar has lodged a report on 11/05/2012 against (i) Meghshyam Mahadeo Rane; (ii) Vinod Sitaram Rane; (iii) Shyamkant Bhau Dessai (applicant); (iv) Mrs. Sarita M. Rane; (v) Mrs. Shyamal Shyamkant Dessai; (vi) Mrs. Dipti Vinod Rane, all Directors of M/s Parees Enterprises Corporation Ltd. alleging that all of them, in furtherance of their common intention, opened Branch Office at Vasco-da-Gama, Goa and canvassed and advertised for investment in different schemes in their Company by assuring high interest rates and thus induced the complainant and other investors to invest money in their Company. However, after maturity of the invested money, the said Directors did not repay the amounts as assured and dishonestly misappropriated the same for their own use and thus, cheated the complainant and other investors.

**4.** The investigating officer has filed reply resisting the application. The applicant has then filed affidavit-in-rejoinder.

5. The applicant had filed Bail Application No. 272 of 2012 for anticipatory bail before the Sessions Judge and by order dated 02/11/2012, the learned Additional Sessions Judge, Mapusa had dismissed the same. Again, the applicant filed Anticipatory Bail Application no. 576 of 2013 before the Sessions Court and the same was also dismissed by the learned Additional Sessions Judge, Panaji by order dated 16/12/2013. Subsequently, the applicant filed the Criminal Application (Bail) No. 86 of 2013 before this Court, but the same was withdrawn by the applicant.

6. Mr. Naik, learned Counsel appearing on behalf of the applicant submitted that the Company "Parees Enterprises Corporation Ltd" was set up on 15/04/2002 and the applicant was admitted as Director of the said Company, but he resigned from the said Company on 18/03/2004 and necessary Form No. 32 has been submitted before the Registrar of Companies. This fact has not been denied by the prosecution. He further submitted that the applicant has filed a writ petition for quashing FIR as against him and the same bears Stamp No.995 of 2014. He urged that the applicant had made himself available to the Investigating Officer on 27/03/2014, but no interrogation was carried out. He submitted that out of the eight accused persons, six have been granted anticipatory bail and the applicant is entitled to pre-

arrest bail on account of parity.

7. It appears that there is some material to show that after the applicant resigned as Director, the land admeasuring 1,38,000/- square metres situated at Velhe Taluka of Pune District was purchased in his name for an amount of ₹ 6,78,000/- from the funds of the Company. There is also material on record to show that the applicant entered into an agreement for sale of this land for ₹ 5,00,000/- in the year 2008 and then disposed of the said land to one Mr. Parmar in the year 2010. It is the contention of the learned Additional Public Prosecutor that this transaction regarding the purchase of the land has to be investigated into for which custodial interrogation of the applicant is required. Since the alleged sale deed has been executed before the Sub-Registrar, Velhe Taluka, District Pune, a copy of the same can well be obtained from the Sub-Registrar.

8. It should be kept in mind that by order dated 02/11/2012 passed in Anticipatory Bail Application No. 289 of 2012, Smt. Shyamal Dessai, wife of the present applicant has been granted anticipatory bail. Another co-accused by name Shri Narayan Dhondi Sawant, who was appointed as a Director of the said Company on 28/12/2004 and who resigned from the Company on

09/11/2006 has also been granted anticipatory bail by the learned Additional Sessions Judge, Mapusa by order dated 29/04/2013 in anticipatory bail application no. 170 of 2013. Said Narayan Dhondi Sawant was alleged to be in close relation with the chairman and Managing Director Mr. Meghsyam M. Rane and in the absence of Managing Director, he was working as Chief of the accused company. He was allegedly collecting the amounts. Another co-accused by name Shri Maruti Bhiwaji Desai, who was appointed as Director of the said Company on 28/12/2004 and resigned on 12/09/2005 and who used to make collections, has also been granted anticipatory bail by the learned Additional Sessions Judge by order dated 29/04/2013 in Anticipatory Bail Application No. 171 of 2013. Then, by order dated 08/05/2013 passed in Criminal Application (Bail) No. 43 of 2013, the co-accused by name Mr. Vinod Sitaram Rane, who was in the accused company from its inception and who claimed to have resigned as Director of the Company in the year 2009, has been granted anticipatory bail, by a learned single Judge of this Court, holding that custodial interrogation was not required as it would not serve any purpose and the custody of the applicant cannot be asked for by the police for the purpose of tracing the other accused persons. Inter alia, the allegation against said Vinod Rane was that by resolution dated 10/08/2011, the

Managing director was granted authority to sell assets of the company to settle the liability of the company and this resolution was signed by the said Managing Director as well as by Vinod Rane, as one of the Directors.

9. In the case of “***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others***”, [AIR 2011 SC 312], the Hon'ble Supreme Court has observed that following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

“i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with

the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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 accused is entitled to an order of bail.”

It is further observed by the Apex Court that arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

**10.** Considering that various co-accused as named above have been already granted bail in anticipation, I am of the view that the applicant has made out a case for anticipatory bail.

**11.** In the result, the application is allowed.

(a) In the event of arrest of the applicant in the Crime No. 19 of 2012 registered with C.I.D. Economic Offence Cell, Crime Branch, Panaji, Goa, the applicant shall be released on bail by execution of P.R. Bond in the sum of ₹ 75,000/- (Rupees Seventy Five Thousand only) with one surety in the like amount under the following conditions:

- i. The applicant shall attend C.I.D. Economic Offence Cell, Crime Branch, Panaji, Goa from Monday i.e. 5<sup>th</sup> May, 2014 from 10.00 hours to 13.00 hours for a period of one week and thereafter as and when called by the



Investigating Officer.

ii. The applicant shall deposit his passport, if he has one, with the Investigating Officer within a period of 10 days from today.

iii. The applicant shall not directly or indirectly make any inducement, threat to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or Court nor shall tamper with the evidence.

iv. The applicant shall co-operate with the Investigating Officer in the Investigation of the present case.

U. V. BAKRE, J.

SMA