A1

PROFORMA FOR FIRST LISTING

SECTION - II-A

The case pertains to (Please tick/check the correct box):

- [√] Central Act: (Title) (i) Code of Criminal Procedure, 1973 (ii) IPC
- [√] Section: (i) 482 (ii) 406, 420 & 34
- [ ] Central Rule: (Title) N/A
- [ ] Rule No(s): N/A
- [ ] State Act: (Title) N/A
- [ ] Section: N/A
- [ ] State Rule: (Title) N/A
- [ ] Rule No(s): N/A
- [ ] Impugned Interim Order: (Date) N/A
- [√] Impugned Final Order/Decree: (Date) 22.02.2019
- [√] High Court: (Name) High Court of Judicature at Bombay.
- [√] Names of Judges: Hon'ble Justice Prakash D. Naik, J.
- [ ] Tribunal/Authority: (Name) N/A

---

1. Nature of matter: [X] ~~Civil~~ [√] Criminal
2. (a) Petitioner/Appellant No.1: Amul Navnitlal Rawal

   (b) e-mail ID: N/A

   (c) Mobile Phone Number: N/A
3. (a) Respondent No.1: The State of Maharashtra & Anr.

   (b) e-mail ID: N/A

   (c) Mobile Phone Number: N/A

A

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.__________ OF 2019

IN THE MATTER OF:-

Amul Navnitlal Rawal ... Petitioner

- Versus -

The State of Maharashtra & Anr. ... Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.

2. The Petition is barred by time and there is delay of 91 days in filing the same against impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay and Petition for condonation of 91 days delay has been filed.

3. There is delay of ____ days in refilling the Petition and Petition for condonation of ____ days delay in refilling has been filed.

(BRANCH OFFICER)

Place : New Delhi
Date : 22.08.2019

RECORD OF PROCEEDINGS

Sl.No.	Date of record of proceedings	Page Nos.

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4. (a) Main category classification: 14 CRIMINAL MATTER

(b) Sub classification: 1407 OTHERS.

5. Not to be listed before: N/A

6. (a) Similar disposed of matter with citation, if any, & case details: No Similar matter disposed of

(b) Similar pending matter with case details: No similar matter pending

7. **Criminal Matter: Yes.**

(a) Whether accused/convict has surrendered: ☒ ~~Yes~~ ☑ No

(b) FIR/C.R. No. 9/2016 Date: 07.01.2016

(c) Police Station: Charkop Police Station, Mumbai, Maharashtra

(d) Sentence Awarded: No sentence awarded

(e) period of sentence undergone including period of Detention/Custody undergone NOT IN JAIL

8. **Land Acquisition Matter: N/A**

(a) Date of Section 4 notification: N/A

(b) Date of Section 6 notification: N/A

(c) Date of Section 17 notification: N/A

9. **Tax Matter:** State the tax effect: N/A

10. Special Category (first Petitioner/Appellant Only): N/A

☐ Senior Citizen > 65 years ☐ SC/ST ☐ Woman/Child ☐ Disabled ☐ Legal Aid case ☐ In custody

11. Vehicle Number (in case of Motor Accident Claim Matters): N/A

Filed by

Landge

[ANAND DILIP LANDGE]
Advocate for the Petitioner(s)
Registration No.2739
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Sahyadri Apartment, 9-A,
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E-mail: advanandlandge@gmail.com

Place: New Delhi
Date: 22.08.2019

B

SYNOPSIS & LIST OF DATES

The present Special Leave Petition is filed against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay, whereby the Hon'ble High Court has erroneously rejected the Criminal Application filed by the Petitioner.

The Hon'ble High Court dismissed the said Application on the ground that the said Application cannot be termed as an Application for return of property under the provisions of the Code of Criminal Procedure as the same was not seized by the Police and further that the guilt of the Respondent No.2 was yet to be proven as the Trial was yet pending.

That the Hon'ble High Court has failed to appreciate the following aspects in the facts and circumstances of the present case:

A. Whether the Hon'ble High Court has erred while exercising powers under Section 482 of the Criminal Procedure Code, 1973 rejecting the Application for withdrawal of money from the Registry of the Hon'ble High Court which was filed as a precondition for securing relief under Section 438 of the Code of Criminal Procedure Code, 1973?

B. Whether the Hon'ble High Court while securing the relief under Section 438 has not considered that the Respondent

C

No.2 deposited the money voluntarily in the Hon'ble High Court and whether the Applicant being the Original Complainant who is the victim, is entitled to withdraw the money deposited in the Registry of the Hon'ble High Court of Bombay?

C. Whether, in light of the judgment of this Hon'ble Court in the case of *Teesta Atul Setalvad and Ors vs. The State of Gujarat and Ors (AIR 2018 SC 27)*, the Hon'ble High Court has failed to consider the situation wherein after completion of investigation, the bank accounts can be freezed under section 102 of the Criminal Procedure Code, 1973 whereby the money can be returned to the Original Complainant under section 457 of the Criminal Procedure Code, 1973?

D. Whether the Hon'ble High Court failed to appreciate that the purpose of justice is to provide immediate relief to the victim, who in the present case, being the present Applicant (Original Complainant), who cannot be asked to wait till the completion of the trial as the money deposited in the Registry of the Hon'ble High Court can be returned to the victim (Original Complainant) with conditions as mentioned/stipulated in Section 457 of the Criminal Procedure Code, 1973?

E. Whether the Original Complainant who is the victim, can be asked to wait for another 10 years until the conclusion

D

of the Trial to receive the money that rightfully belongs to the Original Complainant?

F. Whether the impugned Judgment is erroneous inasmuch as the Hon'ble High Court failed to consider that the Respondent No.2 has himself admitted that he has withdrawn the money which has been given by the Petitioner for purchase of the flats and which has been deposited in the Registry of the Hon'ble Bombay High Court vide order dated 14.03.2016 passed by the Hon'ble Bombay High Court;

G. It has been held in the case of *Rakesh Baban Borhade versus State of Maharashtra and Anr. (2015) 2 SCC 313,* this Hon'ble Court has held that:

> *"11. In the result, these appeals are allowed and the Appellant is granted anticipatory bail on his furnishing a personal bond of Rs. 25,000/- with two sureties of the like amount to the satisfaction of the trial court. The Appellant shall co-operate with the investigating agency. Without prejudice to the contention of the parties, the complainant-second Respondent (M/s. Merit Magnum Construction) is permitted to withdraw rupees one crore deposited by the Appellant in this Court. Withdrawal of the said amount of rupees one crore by the second Respondent shall be subject to the result of pending litigation between the parties or any other litigation contemplated by the parties pertaining to the MOU dated 21.12.2005. The appeals stand disposed of accordingly".*

E

It is submitted that the Hon'ble High Court has failed to consider that the amount deposited with the Registry rightly belongs to the Petitioner and denial of the same would amount to injustice to the victim who has been cheated and made to suffer at the hands of the Developers who enticed the Original Complainant in purchasing flats and made him pay money and thereafter neither have given him the flat and nor have they returned the money which was paid by the Petitioner/Original Complainant.

Consideration has to be placed on the admission of the Respondent No.2 recorded in order dated 14.03.2016 that the money was withdrawn by the Respondent No.2 and wherein further the Respondent No.2 voluntarily stated that he was ready and willing to deposit the same in the Registry of the Hon'ble High Court.

The current stage of the proceedings in the Trial Court is that of framing of charges and given the statistics of the rate of pending and disposed criminal cases in CMM Courts in Mumbai, which evidences the fact that the Trial would take considerable time to reach finality and the Petitioner cannot be left in the lurch and in the interim the money deposited in the Registry of the Hon'ble High Court can be returned to the Original Complainant subject to the pending litigation between the parties.

F

The Petitioner is an Obstetrician/Gynecologist by profession and has been practicing for more than 23 years. He is a respected, law abiding citizen of the country. The Petitioner invested in a construction project of one Mr. Vinod Bathia and booked four flats namely G-101 and G-102 on G-103 and G-104 in the project being Shubhangan in Palghar and transferred consideration to the tune of Rs.52,00,000/- (Rupees Fifty Two Lakh only). Thereafter a further demand of Rs.14, 50,000/- (Rupees Fourteen Lakh Fifty Thousand only) was made for the purpose of paperwork and other formalities which was also complied to by the Petitioner for purchase of 4 flats in a Construction Project at Palghar.

Thereafter in January 2014, Vinod Bathia informed the Petitioner that the progress of the construction of the project at Shubhangan was extremely sluggish and suggested that consideration being Rs.52,00,000/- and Rs.14,50,000/- received be diverted to another project in Malad wherein the Petitioner would in lieu of 4 flats at Palghar be given one flat admeasuring 1150 sq.ft at Malad which was being developed by one K.C.D. and Siddharth Life Spaces Pvt. Ltd.(hereinafter referred to as *"the Company")* of which Mr. Vinod Bathia was one of the Directors along with Mr. Bharat Bhushan, Mr. Rajiv Darji and Mr. Lipton Gonsalves.

Pursuant to the above, money to the tune of Rs.35,00,000/- (Rupees Thirty Five Lakhs only) was demanded for purchase and allotment of flat at Malad and the same was paid by way of 6 cheques issued in favour of K.C.D. and Siddharth Life Spaces Pvt. Ltd amounting to Rs.35,00,000/-. An Allotment Letter dated 15.07.2014 was issued by the Company allotting a flat admeasuring 1150 sq.ft in the Project at Malad.

A Memorandum of Understanding dated 16.07.2016 was executed confirming the allotment of flat admeasuring 1150 sq.ft at Malad and further the adjustment of the consideration paid and payable was recorded in the said Memorandum of Understanding.

On further enquiry into the progress of construction of the project at Malad, it was found out that no construction was taking place at the location of the Project.

The Petitioner had been misguided and misrepresented to invest his hard-earned savings not once but on multiple occasions to fill up the pockets of the Respondent No.2.

The Respondent No.2 withdrew a sum of Rs.10,83,000/- (Rupees Ten Lakhs Eighty Three Thousand only) from the accounts of the Company out of the money deposited by the Petitioner and pursuant to which FIR No.9 of 2016 dated 07.01.2016 was lodged at Charkop Police Station against the Directors of the said Company who have cheated the Petitioner to part with his hard earned money in lieu of false promises of providing flats to the Petitioner.

H

The Respondent No.2 preferred Anticipatory Bail Application No. 38 of 2016 before the Hon'ble Sessions Court, Dindoshi, Mumbai which was rejected vide order dated 22.01.2016. Thereafter, Respondent No.2 preferred Anticipatory Bail Application No.159 of 2016 before the Hon'ble High Court of Bombay and was granted bail vide order dated 14.03.2016. It has been recorded in the said order that the Advocate for the Respondent No.2 voluntarily made a statement that he had withdrawn an amount of Rs.10,83,000/- and was ready and willing to deposit the said amount in the Hon'ble High Court. The Hon'ble High Court therefore imposed a condition that *'without prejudice'* the said amount of Rs.10,83,000/- was to be deposited in a fixed deposit in any Nationalized Bank and the same condition was duly complied with by the Respondent No.2.

Thereafter Application bearing No.1118 of 2018 was preferred by the Petitioner seeking permission to withdraw the amount deposited by the Respondent No.2 owing to his financial constraints and urgent need of money. Since the Petitioner is a senior citizen and is on his beam-ends and is managing his Nursing Home with a lot of difficulty, he needed the hard-earned money of which he has been cheated and a part of which has been deposited in the Court.

Thus, this Hon'ble Court ought to allow the present Special Leave Petition and grant liberty to the Petitioner to

I

withdraw the monies that have been deposited in the Registry of the Hon'ble High Court, to meet his financial needs as he is a victim and the money deposited is the rightful money of the Original Complainant in the interest of justice.

LIST OF DATES

---	The Petitioner is an Obstetrician/Gynecologist by Profession having his Medical Practice is more than 23 Years. The Petitioner and his wife namely Mrs. Smita Rawal are owners of "Gayatri Maternity and Nursing Home", at Charkop, Kandivli (West).
2013	The wife of Accused No.1 (Vinod Bathia) brought to the knowledge of the Petitioner and his wife that the Accused No.1 under the name of Proprietorship "Siddharth Enterprises" was constructing a Project by name "Shubhangan" in Palghar.
2013	Considering the abovementioned fact and visiting the site of construction in Palghar, Petitioner decided to invest in the said Project on the basis of cordial relationship with the Accused No.1. The Petitioner booked 4 flats in the said Project bearing Nos.G-101 to G-104. Hereinafter referred as 1st Project.

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2014	The Accused informed to the Petitioner that the progress of the said construction was extremely sluggish and the said project would take at least 4 to 5 years to complete and function as per the initial plan. Further, the Accused also suggested that he had another New Project in Malad and promised that the Accused would shift the said investment made by the Petitioner in the 1st Project to his new Project in Malad. Hereinafter as 2nd Project.
04.06.2014	The Petitioner issued 6 Cheques in favour of the Proprietorship Firm towards the booking of the said flats total amount of Rs.35 Lakhs.
15.07.2014	Allotment Letters issued by the said Proprietorship Firm in favour of the Petitioner with respect to the flat.
16.07.2014	The Petitioner had been executed an MOU with Accused No.1 & 2 (Vinod Bathia & Bharat Bhushan) stating that the earlier amounts to the tune of Rs.52 Lakhs given in view of the 1st Project to the Proprietorship Firm namely Siddharth Enterprises shall be merged with the current investment in the 2nd Project. It was also agreed that if the Accused No.1 is unable to pay the Loan of Rs.14.50 Lakhs given to him

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	by the present Petitioner before the possession of the flat in 1st Project, then the said amount shall be paid by the Accused No.1 to the Company and hence will be adjusted in the final payment of flat in the 2nd Project along with the payment of Rs.35 Lakhs.
Dec, 2014.	After the execution of MOU, the Petitioner had been inquired with the Accused regarding registration of the flat in the 2nd Project and on further inquiry, it was found that no construction was taking place at the location.
12.05.2015	Considering the situation of construction, the Petitioner sent demand notice through his advocate to all the Accused asking them to return all the investment made by the Petitioner and his wife for the purpose of purchase of flats in the said projects.
2016	The Respondent No.2 i.e. Accused No.4 who is the Director of the Company has been withdrawn amount of Rs.10,83,000/- from the Company's Bank Account.
07.01.2016	All the Directors of the Company duped the Petitioner therefore FIR No.9 of 2016 lodged at Charkop Police Station, Mumbai U/s.406, 420

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	r/w 34 of IPC against the Directors of the Petitioner including Respondent No.2.
22.01.2016	Anticipatory Bail Application No.38 of 2016 filed by the Respondent No.2 along with Accused No.2 – Bharat Bhushan rejected by the Ld. Sessions Court, Dindoshi. **ANNEXURE-P-1** is the True Copy of the order dated 22.01.2016 in ABA No.38 of 2016 passed by the Ld. City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai. (at Page Nos. 32-36)
14.03.2016	The Respondent No.2 and Accused No.2 – Bharat Bhushan preferred separate Anticipatory Bail Applications before the Hon'ble High Court wherein a voluntary statement was made by the Advocate for Respondent No.2 admitting of withdrawal of amount of Rs.10,83,000/- and also admitted that he is ready to deposit the same in the Hon'ble High Court. By way of common order the Hon'ble High Court was pleased to grant interim protection to the Applicants therein on the stipulated terms and conditions. **ANNEXURE-P-2** is the True Copy of the common order dated 14.03.2016 in ABA

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	Nos.159 & 462 of 2016 passed by the Hon'ble High Court of Judicature at Bombay. (at Page Nos. 37-39)
04.04.2016	As per the order dated 14.03.2016, the Respondent No.2 herein has been deposited an amount of Rs.10,83,000/- in the Hon'ble High Court. In view of this, the Hon'ble High Court confirmed the interim order dated 14.03.2016 and disposed of the ABA No.159 of 2016. **ANNEXURE-P-3** is the True Copy of the order dated 04.04.2016 in ABA No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay. (at Page Nos. 40)
11.09.2018	Considering the deposit of above said amount, the Petitioner had been preferred Criminal Application No.1118 of 2018 in ABA No.159 of 2016 seeking permission to withdraw the amount of Rs.10,83,000/- deposited by the Respondent No.2 before the Hon'ble High Court of Judicature at Bombay. **ANNEXURE-P-4** is the True Copy of the Criminal Application No.1118 of 2018 in ABA No.159 of 2016 dated 11.09.2018 filed by the Petitioner before the Hon'ble High Court of Judicature at Bombay. (at Page Nos. 41-55)

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06.02.2019	The Petitioner filed RTI Application before the Public Information Officer, High Court seeking information from the Registry regarding the money that has been deposited.
22.02.2019	The Hon'ble High Court reject said Application and passed single line order that the reason recorded separately. **ANNEXURE-P-5** is the True Copy of the order dated 22.02.2019 in Criminal Application No.1118 of 2018 in ABA No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay. (at Page Nos. 56) Note: The only single line order was passed on 22.02.2019 and no reasoned order was available till 24.05.2019.
22.02.2019	The Hon'ble High Court dismissed the said Application on the ground that the said Application cannot be termed as an Application for return of property under the provisions of the Code of Criminal Procedure as the same was not seized by the Police and further that the guilt of the Respondent No.2 was yet to be proven as the Trial was yet pending. This order is Impugned Order in the present Special Leave Petition.

	NOTE: The said order was uploaded on 24.05.2019 on the High Court website first time.
27.02.2019	Considering the RTI Application, the Public Information Officer, High Court answered to the question asked by the Petitioner furnished information regarding deposit and withdrawal of amount. The Petitioner has annexed the said information along with present Special Leave Petition by way of separate application seeking permission to file Additional Documents.
22.08.2019	Hence this Special Leave Petition.

Rushi

Impugned Order

APPP-1118-18 (copy)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1118 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO.159 OF 2016

Amul Navnitlal Rawal, ...Applicant
V/s.
The State of Maharashtra & Anr. ....Respondents

Mr. Nilesh Tribhuvan for the Applicant.
Mr. Amit D'Souza for Respondent No.2
Mr. Prashant Jadhav, APP, for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd FEBRUARY, 2019

P.C.:

1. The Applicant has preferred this Application seeking permission to withdraw the amount deposited by Respondent No.2 with the Registry of this Court.

2. The Applicant is Original Complainant in C.R. No.9 of 2016 registered with Charkop Police Station, Mumbai on 7th January 2016 for the offences under sections 406 and 420 r/w section 34 of the I.P.C. The FIR was lodged against Respondent

Nos.2 and other accused persons. The grievance of the Applicant/Complainant was that false promises were made by the Accused to the Complainant that flat premises at Palghar would be handed over to him and the Accused accepted money by cheque and ~~cash~~ and thereafter false promises were made that the flat would be provided at Malad. Although huge amount of Rs. 1,01,50,000/- was accepted by the Accused, neither the flat was given nor the amount refunded to him.

3. The Respondent No.2 preferred an application for Anticipatory Bail, before this Court viz. Anticipatory Bail Application No.159 of 2016. The said Application was heard on 14th March 2016. The co-accused Bharat Bhushan preferred Anticipatory Bail Application No.462 of 2016 which was also heard on 14th March 2016. Interim relief was granted to Respondent No.2 and another Applicants vide common order dated 14 March 2016. The Advocate representing the Respondent No.2 had submitted that the said accused had withdrawn Rs. 10,83,000/- and he is ready to deposit the same in this Court. The Respondent No. 2 was directed to deposit the amount of Rs. 10,83,000/- within 3 weeks in this Court without prejudice. The said amount is to be kept in fixed deposit in

any Nationalized Bank. Pursuant to order dated 14th March 2016 the amount of Rs. 10,83,000/- was deposited by Respondent No. 2 in this Court. In view of this, the interim order dated 14th March 2016 was confirmed vide order dated 4th April 2016.

4. The Applicant had preferred this application on 1st September 2018 for withdrawal of the amount deposited by Respondent No. 2.

5. The contention of the Applicant is that on the basis of false representations the Applicant had parted with huge amount to the accused. The Respondent No. 2 has admittedly withdrawn the amount of Rs. 10,83,000/- and while granting Anticipatory Bail he had agreed to deposit the same in this Court. The Applicant is in financial constraints and in urgent need of money. The amount was invested out of his savings. The amount was directed to be deposited to meet the ends of justice. The Respondent No. 2 had offered to deposit the amount and the Applicant being the victim cannot be deprived of the said amount. The Applicant had parted the amount towards possession of flat which was not given to him. Charge sheet has been filed before the concerned Court. The Trial

may not commence within short span of time. The Civil Court would take ~~a longer~~ time for recovery of the amount. The Applicant is a senior citizen. The Court can grant relief in exercise of power under section 482 of Cr.P.C. It is submitted that the preamble of the Constitution guarantees justice to commercial, social, economic and political The statement and object of Cr.P.C indicate that law relating to criminal procedure is applicable to all criminal proceedings in India. Reliance is placed on United Nations Universal Declaration Human Rights 1948, Covenant of Human Rights and Law Commission Report of 1996. The Applicant also relied upon the order passed by the Supreme Court in Transfer Petition No. 1343 of 2008 and pointed out the observation in para 18 and 22 of decision where reference is made to ratio of decision in the case of **Hussainara Khatoon vs. State of Bihar** and **Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Others** {(2009) 2 SCC 784}. It is contended that the trial would take indefinite time to conclude and the Applicant would be deprived of his hard earned money. The decision in the case of **Hussainara Khatoon** (supra) in the aforesaid judgment was relating to this speady trial which is considered as integral and essential part of the fundamental rights to life and liberty under article 21.

6. The Learned Advocate also relied upon the order passed on Bail Application No. 931 of 2017 wherein the accused was directed to deposit the amount and the Complainant was permitted to withdraw the amount deposited by the accused seeking bail in this Court.

7. In this application this Court is concerned with the prayer for withdrawal of the amount deposited by Respondent No. 2 in Application for Anticipatory Bail.

8. The Learned Counsel for the Respondent No. 2 filed reply to the Application opposing relief prayed in this Application. It is submitted that the amount was deposited without prejudice to his defence. There is no provision in law for entertaining the Application for withdrawal of the amount. The Respondent No.2 has filed an Application for discharge which is pending. The order granting bail clearly mention that the amount is to be deposited without prejudice. The ground stated by the Applicant claiming financial constraints and delay in trial cannot be considered for allowing such Application.

9. Respondent No.2 has filed reply opposing this application and contended that the Applicant has filed Summary Suit bearing No.541 of 2016 which arises out of the same transaction. The averments in the present Application and the summary suit are contrary to each other. The Applicant also filed a Summons for Judgment bearing No. 5 of 2017 in the said summary suit. The Summons for Judgment was listed for arguments before this Court on 10th November 2017. The Court has passed order that the counsel appearing on behalf of plaintiffs fairly stated that since triable issues arise in the suit, the Summons for Judgment be dismissed and the suit be transferred to the list of commercial causes. The Court dismissed the Summons for Judgment and unconditional leave was granted to the defendants therein to defend the suit. The suit was accordingly transferred to the list of commercial causes. It is further submitted that the first information report does not make out any offence against Respondent No. 2.

10. On perusal of the order dated 14 March 2016, it is apparent that statement was made by the counsel for the Respondent No. 2 that the amount of Rs. 10,83,000/- was

withdrawn and he is ready to deposit the same in the Court. The Respondent No. 2 was directed to deposit the amount of Rs. 10,83,000/- within stipulated time in this Court without prejudice. It was further directed that the amount be kept in fixed deposit in any Nationalized Bank. Thus the order categorically mentions that the amount is to be deposited without prejudice. The trial is pending. This cannot be termed an Application for return of property under the provisions of Code of Criminal Procedure. The amount was not seized by the Police. The guilt of the accused is yet to be proved. In the circumstances, I do not find that the Applicant has made out any ground for allowing this Application. The trial Court, however, will be at liberty to pass appropriate orders with regard to the said amount at appropriate stage.

ORDER

Application is rejected .

(PRAKASH D. NAIK, J.)

True Copy

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

[S.C.R., ORDER XXII RULE 2(1)]

Under Article 136 of the Constitution of India

SPECIAL LEAVE PETITION (CRL.) NO.__________ OF 2019

(WITH PRAYER FOR INTERIM RELIEF)

BETWEEN:-

	POSITION OF THE PARTIES		
	Before Trial Court	Before High Court	This Hon'ble Court
Amul Navnitlal Rawal Age: 57 years, Occu: Doctor, Residing at 301, Shivneri, CHS, Plot No.252, Sector – 5, Charkop, Kandiwali East, Mumbai–400067, Maharashtra	Complainant	Applicant	Petitioner
- AND -			
1. The State of Maharashtra Through Investigation Officer, Charkop Police Station, Mumbai, Maharashtra	Prosecutor	Respondent No.1	Contesting Respondent No.1
2. Mr. Lipton Gonsalves, aged 39 years, Business, R/at Agashi, Virar West, Taluka Vasai, District Palghar, Maharashtra	Accused No.4	Respondent No.2	Contesting Respondent No.2

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION OF THE ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:-

1. That the Petitioner above named respectfully submit this Petition seeking Special Leave to Appeal under Article 136

of Constitution of India against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay, whereby the Hon'ble High Court has erroneously rejected the Criminal Application filed by the Petitioner.

2. QUESTIONS OF LAW:-

The following questions of law arise for consideration by this Hon'ble Court:-

(i) Whether the Hon'ble High Court has erred while exercising powers under Section 482 of the Criminal Procedure Code, 1973 rejecting the Application for withdrawal of money from the Registry of the Hon'ble High Court which was filed as a precondition for securing relief under Section 438 of the Code of Criminal Procedure Code, 1973?

(ii) Whether the Hon'ble High Court while securing the relief under Section 438 has not considered that the Respondent No.2 deposited the money voluntarily in the Hon'ble High Court and whether the Applicant being the Original Complainant who is the victim, is entitled to withdraw the money deposited in the Registry of the Hon'ble High Court of Bombay?

(iii) Whether, in light of the judgment of this Hon'ble Court in the case of Teesta Atul Setalvad and Ors vs. The State of

Gujarat and Ors(AIR 2018 SC 27), the Hon'ble High Court has failed to consider the situation wherein after completion of investigation, the bank accounts can be freezed under section 102 of the the Criminal Procedure Code, 1973 whereby the money can be returned to the Original Complainant under section 457 of the the Criminal Procedure Code, 1973?

(iv) Whether the Hon'ble High Court failed to appreciate that the purpose of justice is to provide immediate relief to the victim, who in the present case, being the present Applicant (Original Complainant), who cannot be asked to wait till the completion of the trial as the money deposited in the Registry of the Hon'ble High Court can be returned to the victim (Original Complainant) with conditions as mentioned/stipulated in Section 457 of the Criminal Procedure Code, 1973?

(v) Whether the Original Complainant who is the victim, can be asked to wait for another 10 years until the conclusion of the Trial to receive the money that rightfully belongs to the Original Complainant?

(vi) Whether the impugned Judgment is erroneous inasmuch as the Hon'ble High Court failed to consider that the Respondent No.3 has himself admitted that he has withdrawn the money which has been given by the Petitioner for purchase of the flats and which has been deposited in the Registry of the Hon'ble Bombay High Court vide order dated 14.03.2016 passed by the Hon'ble Bombay High Court?

3. DECLARATION IN TERMS OF RULE 2(2):-

The Petitioner state that no other Petition seeking leave to appeal has been filed by him against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay.

4. DECLARATION IN TERMS OF RULE (4):-

That **ANNEXURES P-1** to **ANNEXURE P-5** produced alongwith the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the Hon'ble High Court against whose order the Leave to Appeal is sought for in this Petition.

5. GROUNDS:-

Leave to Appeal is sought for on the following grounds:-

(A) It is submitted that the Hon'ble High Court has failed to consider that the amount deposited with the Registry rightly belongs to the Petitioner and denial of the same would amount to injustice to the victim who has been cheated and made to suffer at the hands of the Developers who enticed the Original Complainant in purchasing flats and made him pay money and thereafter neither have given him the flat and nor have they returned the money which was paid by the Petitioner/Original Complainant.

(B) Because consideration has to be placed on the admission of the Respondent No.2 recorded in order dated 14.03.2016 that the money was withdrawn by the Respondent No.2 and wherein further the Respondent No.2 voluntarily stated that he was ready and willing to deposit the same in the Registry of the Hon'ble High Court.

(C) Because the current stage of the proceedings in the Trial Court is that of framing of charges and given the statistics of the rate of pending and disposed criminal cases in CMM Courts in Mumbai, which evidences the fact that the Trial would take considerable time to reach finality and the Petitioner cannot be left in the lurch and in the interim the money deposited in the Registry of the Hon'ble High Court can be returned to the Original Complainant subject to the pending litigation between the parties.

(D) Because the Respondent No.2 preferred Anticipatory Bail Application No. 38 of 2016 before the Hon'ble Sessions Court, Dindoshi, Mumbai which was rejected vide order dated 22.01.2016. Thereafter, Respondent No.2 preferred Anticipatory Bail Application No.159 of 2016 before the

Hon'ble High Court of Bombay and was granted bail vide order dated 14.03.2016. It has been recorded in the said order that the Advocate for the Respondent No.2 voluntarily made a statement that he had withdrawn an amount of Rs.10,83,000/- and was ready and willing to deposit the said amount in the Hon'ble High Court. The Hon'ble High Court therefore imposed a condition that *'without prejudice'* the said amount of Rs.10,83,000/- was to be deposited in a fixed deposit in any Nationalized Bank and the same condition was duly complied with by the Respondent No.2.

(E) It is humbly submitted that the Petitioner is going through financial difficulty and is in urgent need of money. The amount invested by the Petitioner in the said Company is a huge sum and the same has been invested out of the savings of the Petitioner which is hard earned money earned out of his noble profession of medical practice over 23 (Twenty Three) years.

(F) It is submitted that the son of the Petitioner, Mr. Harsh Amul Rawal is of marriageable age and is about to get married in a year or two, that the Petitioner has been gradually over time saving monies and funds to get his only son married. The hard earned money of the Petitioner which were kept as savings has been locked up for over considerable period of three years towards the investment made in respect of the flats in 2nd Project carried out by the said Company, when the said funds could have been easily utilized by the Petitioner for the purpose of his only son's marriage.

(G) It is further submitted, as mentioned above, the Petitioner is having a medical practice over 23 (Twenty Three) years and has an established clinic of his own by the name " Gayatri Maternity and Nursing Home' situated at Charkop, Kandiwali (West). The Petitioner further states that all the expenses that are incurred at the Petitioner's Nursing home are being borne by him, further the Petitioner states that numerous persons are working at his clinic and it is his role and responsibility to issue salaries to all of the people employed by him.

(H) That the Petitioner further states that apart from all the above mentioned expenses, it is extremely difficult to manage the upkeep of a maternity clinic along with the regular wear and tear of the equipment, the same causes a huge financial burden on the Petitioner. that the Petitioner is currently going through shortage of funds as he had invested huge sum of money and the same is dead locked for more than 3 (three) years while the Petitioner is being left to fend for himself when he could have made absolute use of the funds. As mentioned earlier, the Petitioner has his established Maternity Hospital since 27 years which is a quite considerable amount of time. The infrastructure of the said Hospital is due for up gradation and some additions to be made to the already existing infrastructure.

(I) It has been held in the case of Rakesh Baban Borhade versus State of Maharashtra and Anr. (2015) 2 SCC 313, this Hon'ble Court has held that:

"10. When the Special Leave Petitions came up for hearing, by order dated 9.5.2014 interim protection from arrest was granted to the Appellant-accused and without prejudice to the contentions, the Appellant was directed to deposit a sum of rupees one crore in the Registry of the Supreme Court and in compliance of the said order, the Appellant has deposited rupees one crore. Since the transaction is in the nature of commercial transaction and since the Appellant has also shown his bonafide by depositing rupees one crore, pending further investigation, in our view, anticipatory bail could be granted to the Appellant.

11. In the result, these appeals are allowed and the Appellant is granted anticipatory bail on his furnishing a personal bond of Rs. 25,000/- with two sureties of the like amount to the satisfaction of the trial court. The Appellant shall co-operate with the investigating agency. Without prejudice to the contention of the parties, the complainant-second Respondent (M/s. Merit Magnum Construction) is permitted to withdraw rupees one crore deposited by the Appellant in this Court. Withdrawal of the said amount of rupees one crore by the second Respondent shall be subject to the *result of pending litigation between the parties or any other litigation contemplated by the parties pertaining to the MOU dated 21.12.2005. The appeals stand disposed of accordingly".*

(J) It has been held by this Hon'ble Court in the case of P. Saraswathi vs State of Madras 2018 (3) MLJ (Crl) 35 that a Court of Law has power to order release of property and the relevant portion has been reproduced herein below for ready reference:

> *"11. Under Section 457 of Cr.P.C., it is to be pointed out that a Court of Law has power to order release of property seized from any person in connection with an offence, even though the property was not produced and the trial of the main case has not commenced, as per decision of the Honourable Supreme Court in Ram Prakash Sharma Vs. State of Haryana reported in AIR 1978 SC 1282. Also that, in the decision of Rajendra Prasad Vs. State of Bihar reported in 2001 10 SCC 88, the Honourable Supreme Court had held that "subject to certain conditions, the custody of vehicle can be entrusted during the pendency of trial temporarily to its registered owner".*

(K) In the case of Teesta Atul Setalvad and Ors. vs. The State of Gujarat and Ors., AIR 2018 SC 27, this Hon'ble Court has held as under:

> *"15....Having considered the divergent views taken by different High Courts with regard to the power of*

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seizure Under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be 'property' within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Code of Criminal Procedure. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Code of Criminal Procedure and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the Accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the Accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the Accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the Accused or any of his relations is 'property' within the meaning of Section 102 of the Code of Criminal Procedure and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into".

(L) In the case of A.V. Padma and Ors vs. Venugopal &Ors., (2012) 3 SCC 378, this Hon'ble Court has considered awarding the amount of compensation and further the release of part compensation which had been invested in a Fixed Deposit and the relevant portion has been reproduced herein below for ready reference:

> *5...Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The Tribunals appear to think that in view of the guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice.*
>
> *"6....It was pointed out that if the money was locked up in a nationalised bank, only the bank would be benefited by the deposit as they give a paltry interest which could not be equated to the costs of materials which were ever increasing. It was further stated that the delay in payment of compensation amount*

exposed the Appellants to serious prejudice and economic ruin…"

(M) In the case of Imtiyaz Ahmad v. State of Uttar Pradesh & Ors. (2012) 2 SCC 688, a two-Judge Bench of this Hon'ble Court, held that since the matter had remained pending before the High Court, and was not heard for a long time of over six years or so and since several other cases in different High Courts in India were similarly pending in which the proceedings before the Trial Court had been stayed, no matter the cases involved commission of heinous offences like murder, rape, kidnapping and dacoity etc., this Court enlarged the scope of the proceedings and directed the Registrar Generals of the High Courts to furnish a report containing statistics of cases pending in the respective Courts (emphasis supplied) in which the proceedings had been stayed at the stage of registration of FIR, and framing of charges in exercise of powers under Article 226 of the Constitution or Section 482 or 397 of the Code of Criminal Procedure. On the basis of the statistics so furnished by the High Courts, this Court held that administration of justice was facing problems of serious dimensions. This Court also noticed, on the basis of the material made available by the High Courts, that unduly long delay was being caused in the disposal of the cases resulting in a blatant violation of the rule of law and the right of common man to seek access to justice....".

(N) It is submitted that the Hon'ble High Court has erred in holding that the Petitioner has not made any case for allowing this Application;

(O) It is submitted that this Hon'ble High Court has failed to consider that the Applicant is a senior citizen, who has been cheated and has been constrained to adopt remedies available to him as per law in his attempt to seek justice since the year 2014 to which he has not achieved no result and is yet suffering;

(P) It is submitted that the Hon'ble High Court has failed to take into consideration the list of pending cases in the Maharashtra as on 30.06.2019 and the data has been tabulated herein below for ready reference:

State	Pendency	Disposal	Institution
Maharashtra	23,80,101	4,03,052	5,15,128

Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

(Q) It is submitted that the Hon'ble High Court has failed to take into consideration the list of pending cases in the Chief Metropolitan Courts in Maharashtra as on date and the same has been tabulated herein below for ready reference: It is submitted that the Hon'ble High Court has failed to take into consideration the list of pending cases in the Chief Metropolitan Courts in Maharashtra as on date and the same has been tabulated herein below for ready reference:

Court	Pending Criminal Cases (Total)	Case Type (Warrant or Summons Criminal Case)
Chief Metropolitan Magistrate Courts, Mumbai	4,48,672	4,20,112

(Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

(R) It is submitted that out of the total cases pending in the Chief Metropolitan Magistrate Courts in Mumbai, the Hon'ble High Court has failed to take into consideration that 93.60% are Original Criminal cases that have been filed/instituted before the CMM Courts in Mumbai are Warrant or Summons Criminal Cases and the statistics for the same has been reproduced herein for ready reference:

CMM Court, Mumbai (Case Type)	Number of Pending cases	%
Original (Warrant or Summons Criminal Cases)	4,20,112	93.60%
Appeal	1,329	0.30%
Application	27,415	6.11%

(Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

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(S) It is submitted that the year wise pendency ratio of the cases pending in the CMM Court, Mumbai has been tabulated herein which demons for ready reference:

CMM Court, Mumbai (Year Wise)	Number of Pending cases	%
0 to 1 years	1,23,186	27.46%
1 to 3 years	1,329	0.30%
3 to 5 years	27,415	6.11%
5 to 10 years	**60,881**	**13.57%**
10 to 20 years	53,598	11.95%
20 to 30 years	11,118	2.48%

(Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

(T) It is submitted that the Pendency Ratio of Criminal Cases in the State of Maharashtra as on 30.06.2019 has been tabulated and the disposal of the cases is a minimal and has been reproduced herein below for ready reference:

Criminal Case Stage	Number
Pendency	23,80,101
Institution	5,15,128
Disposal	**4,03,052**

(Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

(U) It is submitted that the stage of the present proceedings is at the 'stage of compliance' and the case of the Petitioner falls under the same category which has been tabulated and reproduced herein for ready reference:

Case Stage	Number	%
Appearance/Service Related	7,104	1.62%

Compliance / Steps / stay	**3,49,462**	**79.77%**
Evidence/ Argument/ Judgment	76,719	17.5%
Pleadings/ Issues / Charges	4,777	1.09%

(Source: https://njdg.ecourts.gov.in/njdgnew/index.php)

(V) It is submitted that the Petitioner has made an RTI Application to the Registry of the Hon'ble High Court of Bombay requesting for information with respect to the money / amounts deposited with the Registry of the Hon'ble High Court of Bombay with respect to conditions imposed in Bail and Anticipatory Bail Applications and number of Applications preferred before the Hon'ble High Court for withdrawal of amounts / money deposited in the Registry of the Hon'ble High Court;

(W) It is submitted that as per the Response received from the Registrar (Finance& Budget), Bombay High Court, with respect to the amounts lying with the Registrar of the Hon'ble Bombay High Court with respect to conditions imposed in Bail and Anticipatory Bail Applications from the year 2005 to 05.02.2019 has been reproduced herein for ready reference:

Year	Amount deposited (Rs)
2005 - 2010	Nil
2011	Rs.43,79,468 /-
2012	Rs.1,72,89,946 /-

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2013	Rs.1,13,00,000 /-
2014	Rs.70,74,439.53 /-
2015	Rs.3,68,10,400 /-
2016	Rs.13,87,45,204 /-
2017	Rs.13,03,16,698 /-
2018	Rs.28,14,10,350.18 /-
05.02.2019	Rs.1,45,63,250 /-
Total As on 05.02.2019	**Rs.64,18,89,755.71**

(Source: RTI enquiry)

(X) It is submitted that as per the reply received from the Registrar (Finance & Budget), Bombay High Court, the Number of Applications that have been made before the Hon'ble Bombay High Court for withdrawal of money deposited in the Registry of the Hon'ble High Court as a condition imposed for granting Bail and Anticipatory Bail and the same has been reproduced herein for ready reference:

Year	**Amount deposited (Numbers)**
2005 – 2010	Nil
2011	04
2012	04
2013	01
2014	Nil
2015	04
2016	15

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2017	12
2018	11
05.02.2019	Nil
Total As on 05.02.2019	**51**

(Source: RTI enquiry)

(Y) It is submitted that the High Court did not deem this to be a fit case to exercise writ jurisdiction though to disclose extra-ordinary circumstances in the interest of justice wherein writ jurisdiction could have been exercised;

(Z) Even otherwise the impugned judgment and order is unjust, bad in law and contrary to the evidence on record.

6. GROUNDS FOR INTERIM RELIEF: -

(i) Because the Petitioner has set out all the relevant facts in details in the accompanying List of Dates and the Petitioner shall crave leave to refer to and rely upon the same as if incorporated herein verbatim for the sake of brevity. The Petitioner submits that the Petitioner has good case on merits and is likely to succeed before this Hon'ble Court. The Petitioner states that Petitioner has made out prima-facie case on merits and that the balance of convenience is also in favour of the Petitioner, therefore, it is desirable in the interest of justice that during the pendency of proceedings in this Hon'ble Court the interim relief as prayed for herein be granted or else the Petitioner shall suffer irreparable loss.

7. MAIN PRAYER:-

The Hon'ble Court be graciously pleased to:-

A. Grant Special Leave to Appeal under Article 136 of the Constitution of India against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay; and

B. Pass any other order and/or directions, as this Hon'ble Court may be fit and proper.

8. PRAYER FOR INTERIM RELIEF: -

(A) Grant ex-parte stay to the execution and operation of the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay; and

(B) Grant Permission to the Petitioner to withdraw the amount deposited by the Respondent No.2 from the Registry of the Hon'ble High Court.

(C) Grant ad-interim relief in terms of Prayer Clause 'A' and 'B'; and

(D) Pass any other order and/or directions as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUNDS EVER PRAY.

DRAWN & FILED BY:-

Drawn on : 20.08.2019
Filed on : 22.08.2019
Place : New Delhi

(ANAND DILIP LANDGE)
Advocate for the Petitioner

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.__________ OF 2019

IN THE MATTER OF:-

Amul Navnitlal Rawal . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . . Respondents

CERTIFICATE

"Certified that Special Leave Petition is confined only to the pleadings before the High Court, whose order is challenged and the other documents relied upon in these proceedings. No additional facts, documents or grounds has been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/Annexures attached to the Special Leave Petition Except Annexure-P-6 are necessary to answer the question of law raised in the Petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the Petitioner whose Affidavit is filed in support of the Special Leave Petition."

(ANAND DILIP LANDGE)
Advocate for the Petitioner

Place : New Delhi
Filed on : 22.08.2019

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.__________ OF 2019

IN THE MATTER OF:

Amul Navnitlal Rawal ...Petitioner

Versus

The State of Maharashtra & Anr. ...Respondents

AFFIDAVIT

I, Amul Navnitlal Rawal, Age: 57, Occu: Doctor, R/at 301, Shivneri CHS, Plot No.252, Sector-5, Charkop, Kandivli (East), Mumbai – 67, Maharashtra, presently at Thane, do hereby state on solemn affirmation as under:-

1. That I am the Petitioner in the above captioned matter and am conversant with the facts and circumstances of the case. I am fully competent to swear this Affidavit.

2. That, I have gone through the accompany Special Leave Petition [Para 1 to 8] Pages 8 to 28, List of Dates at Pages **B** to 0 and interlocutory Applications, which I believe to be true and correct to the best of my knowledge and belief.

3. That Annexures filed are true and correct copies of their respective originals.

VERIFICATION **DEPONENT**

Verified at **THANE** today on this the 20th day of August, 2019 that the contents of Paragraphs 1 to 3 of my above Affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

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APPENDIX (i)

Copy of Section 482 of Code of Criminal Procedure, 1973

482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

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APPENDIX (ii)

Copy of Sections 406, 420 & 34 of IPC

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

34. Acts done by several persons in furtherance of common intention. — When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

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ANNEXURE-P-1

THE CITY CIVIL COURT AT DINDOSHI

(BORIVALI DIVISION), GOREGAON, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.38 OF 2016

BETWEEN:-

- AND -

1. Bharat Bhushan
S/o Omprakash
R/at G-308, Hrushikesh,
Swami Samarth Nagar,
Andheri (W),
Mumbai – 400 053

2. Mr. Lipton Gonsalves,
aged 39 years, Business,
R/at Agashi, Virar West,
Taluka Vasai, District
Palghar, Maharashtra

...Applicants

AND

The State of Maharashtra
Through Investigation Officer,
Charkop Police Station, Mumbai,
Maharashtra

...Respondent

Adv. Mr. Amin Solkar alongwith Adv. Vikas Singh for Applicant.

APP Mr. Mudingari for State present.

Coram: His Honour Judge, Shri. D.K. Bhende

C.R. No.2. Date: 22nd January 2016

ORDER

1. The Applicants are seeking protection under Section 438 r/w 34 of I.P.C. in Crime No.9 of 2016 has been registered against them in Charkop Police Station.

2. As per the Complainant of Shri. Amul Navnitlal Raval, age 53 years, one Vinod Bathia is a husband of Dr. Harsha Vinod Bathia. The wife of Complainant Dr. Smitha and Dr. Harsha had acquainted with each other. The Complainant was intending to purchase the flat hence, he had contacted with Vinod Bathia (Accused) that Vinod Bathia agreed to sell 4 flats to the Complainant and he got Rs.52,00,000/- in cash. In the month of January, 14th that Vinod Bathia disclosed that at least 4 to 5 years would require for completion of project at Shirgaon, Palghar. He gave suggestion that it would be better to purchase the flat in the area of Malad (W). He disclosed in the month of April, 14th that he got one re-development project. For that he again got cash of Rs.14,50,000/- on 10.04.2014 from the Complainant. He gave assurance that their re-development project at Malad (W) would be completed. That time his partner by name Bharat Bhushan was present, they both gave assurance that the flat admeasuring 1150 would eb provided to the Complainant and for that they again demanded Rs.35,00,000/-. On believing their version the Complainant issued cheque in the name of K.C.D. &

Siddharth Life Spasis Pvt. Ltd. That time they both disclosed that K.C.D. is a person by name Rajiv Darji, who is a third financer in a project. They executed four agreement on stamp of Rs.500/-. On believing the version of partner the Complainant had paid Rs.1,01,50,000/-, but surprisingly they failed to hand over the flat. They avoided, their obligations only on technical ground.

At last complainant requested them to refund his amount, but no use. On the contrary, one directors Rajiv Darji boldly states that whenever Vinod Bathia paid money, will refund the same. Now Vinod has already fled away from Mumbai. Thereafter, the Complainant issued legal notice dated 15.05.2014 to all three directors, but surprisingly they did not respond. Thereafter, he visited the site at Malad and found the board by name K.C.D. Siddharth & Shri. Swami Life Spasis and its director and Rajiv Darji and Amol Palande. The Complainant thought that he has been cheated, hence, he lodged report which leads to register the aforesaid offence.

Obviously applicants got apprehension about their arrest in non bailable offence they rushed and seeking protection on the ground that they are not responsible of the so called transaction between the Complainant and that Vinod. So called transaction is in civil nature. On the other hand prosecution has put up reply Exh.5 and strongly opposed, on the ground that from the beginning Bharat Bhushan and Vinod Bathia was active director in a project at Malad (W). Allotment letter bears their signature. They also accepted the cheque from the complainant. In addition the Complainant also put up strong objection through his counsel.

3. The Learned Counsel for the Applicant placed reliance of a case in Vesa Holdings Pvt. Ltd. & Anr. V/s State of Kerala & Ors. Reported in 2015 (2) Crimes 114 (SC) wherein observed that "for constituting an offence of cheating, the Complainant is required to show fraudulent or dishonest intention of the accused at the time of making promise or representation – Merely failure to keep one's promise does not amount to cheating".

4. I have gone through the documents apparently there is a transaction in between complainant and the Vinod Bathia, the role of present applicants is concerned they are trying to shift the responsibility on the shoulder of Vinod. Record shows that Bharat and that Vinod have accepted the cheque. They also issued allotment letter

having their signature. Now these applicants cannot avoid the responsibility on the ground that only Vinod had initially entered into agreement with the complainant and only he received amount. The amount which is paid by the Complainant is more than crore, Now there is no chance of scope to get agreed flat from the accused person within reasonable time. I have found the substance in regard the criminal breach of trust and cheating. For smooth investigation of custodial interrogation the applicant seem to be necessary. Hence, following order.

ORDER

1. Anticipatory Bail Application No.38 of 2016 is hereby rejected and disposed of accordingly.

Date: 22.01.2016

Sd/-
(D.K. BHENDE)
Judge
Sessions Court,
Dindoshi, Mumbai.

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Annexure-P-2

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Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 159 OF 2016

Liftton Gonsalves ... Applicant
Vs.
The State of Maharashtra ... Respondent

ANTICIPATORY BAIL APPLICATION NO. 462 OF 2016

Bharat Bhushan s/o. Omprakash ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Anil D'souza, Advocate for the applicant in ABA/159/2016.
Mr. Singh D. Ramashray, Advocate for the applicant in ABA/462/2016.
Mrs. P.P. Shinde, APP for the respondent/State.
Mr. Sabir Kumar, Advocate for the complainant.
Mr. D.R. Wadekar, P.I., Charkop Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **14th March, 2016.**

P.C.:

These two Applications are moved by the applicants for anticipatory bail, as the applicants/accused are facing charges under sections 406, 420 r/w. 34 of the Indian Penal Code, as the complaint was registered by Amol Rawal against them that the applicants/accused along with co-accused Vinod Bhatia has duped the complainant nearly for Rs.1,05,00,000/-.

2. The learned counsel for the applicant/accused Liftton Gonsalves submitted that the applicant/accused has withdrawn Rs.10,83,000/- and he is ready to deposit the same in this Court.

3. The learned counsel for applicant Bharat Bhushan submitted that the applicant has many documents to show his bonafides and he has paid Rs.11,00,000/- to principal accused Vinod Bhatia and he has also been cheated.

4. Perused the FIR and the documents on record. The Investigating officer is present. Applicant Liftton Gonsalves is directed to deposit an amount of Rs.10,83,000/- within three weeks in this Court without prejudice. The said amount is to be kept in fixed deposit in any nationalized bank. Considering this, interim pre-arrest bail is granted to the applicants/accused on the following terms and conditions:

ORDER

i) In the event of arrest, the applicants-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- each with one or two sureties in the like amount;

ii) The applicants/accused shall not tamper with the evidence or pressurize the complainant;

iii) The applicants/accused shall not indulge into any criminal activity;

iv) The applicants/accused shall attend the concerned police station on every Monday and Thursday between 4 p.m. to 6 p.m. for three weeks.

5. Stand over to 4^{th} April, 2016.

(MRIDULA BHATKAR, J.)

True Copy

Annexure-P-3

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.159 OF 2016

Shri Lipton Gonsalves ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.Anil D'souza for the Applicant
Mrs.P.P. Shinde, APP, for Respondent – State
Mr.D.R. Wadekar, PI, Charkop police station – present
Mr.Subir Kumar for Complainant resp. No.2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 4, 2016**

P.C.:

1. Pursuant to the order passed by this court dated 14.3.2016, The learned Counsel for the Applicant submits that the accused Lipton Gonsalves has deposited amount of Rs.10,83,000/- in this Court. In view of this, the previous interim pre-arrest bail dated 14.3.2016 is hereby confirmed on the same terms and conditions with a modification to clause (iv) of para 4 of the interim pre-arrest bail order dated 14.3.2016 as under:

"The applicant-accused shall attend the concerned police station as and when required."

2. Anticipatory Bail Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)

True Copy

ANNEXURE-P-4

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1118 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO.159 OF 2016

BETWEEN:-

Before
High Court

Amul Navnitlal Rawal
Age: 57 years, Occu: Doctor,
Residing at 301, Shivneri, CHS,
Plot No.252, Sector – 5,
Charkop, Kandiwali East,
Mumbai–400067, Maharashtra

...Applicant

- AND -

1. The State of Maharashtra
Through Investigation
Officer, Charkop Police
Station, Mumbai,
Maharashtra

2. Mr. Lipton Gonsalves,
aged 39 years, Business,
R/at Agashi, Virar West,
Taluka Vasai, District
Palghar, Maharashtra

...Respondents

TO,

THE HON'BLE THE CHIEF JUSTICE,

AND THE OTHER HON'BLE JUSTICES,

OF THIS HON'BLE COURT.

HUMBLE APPLICATION OF THE APPLICANT ABOVENAMED:

MOST RESPECTFULLY SHEWETH: -

1. The Applicant is an Indian inhabitant, and an Obstetrician/Gynecologist by profession having his medical practice of 23 years. That the Applicant and his wife, Mrs. Smita Rawal are owners of *'Gayatri Maternity and Nursing Home'* at Charkop, Kandiwali (West). The Applicant is a respectable person having his deep roots in the society, residing at the address as enumerated in the above cause title.

2. That the Applicant is the Original Complainant C.R. 9 of 2016 (hereinafter referred to as the ***'captioned FIR'***) registered at Charkop Police station on 07.01.2016 under section 406, 420 r/w 34 of the Indian Penal Code against the present bail Applicant/Accused, Mr. Lipton Gonsalves. Hereto marked and annexed is the copy of the FIR dated 07.01.2017 as ***Exhibit A.***

3. That the Original Applicant in ABA No.38 of 2016 Mr. Lipton Gonsalves (hereinafter referred to as the ***'Accused No. 4'***) is Accused No. 4 in the captioned C.R. That the Accused No 4 had, at first applied for Anticipatory Bail No.38 of 2016 at the Ld. Sessions Court, Dindoshi. That the Ld. Sessions Court, Dindoshi was pleased to reject the abovementioned Anticipatory Bail Application vide order dated 22.01.2016

and hence had applied for Anticipatory Bail at the Hon'ble High Court of Judicature, at Bombay. That the Hon'ble High Court of Judicature, at Bombay had granted bail to the Accused on an express condition to deposit Rs.10,83,000/- (Rupees Ten Lakh Eighty Three Thousand only) within three weeks with the registry of the Court.

4. That the Applicant in lieu of the same has approached this Hon'ble court to withdraw the abovementioned amount as he is in immediate need of funds.

5. That the Applicant states the brief and precise facts of the case which are as follows:

   a. That in the year 2013, Dr. Harsha Bathia (wife of Mr. Vinod Bathia) brought to the knowledge of the Applicant and his wife, Mrs. Smita Amul Rawal that her husband, Mr. Vinod Bathia, (herein after referred to as ***Accused No. 1***) under the name of his proprietorship *'Siddharth Enterprises'* hereinafter referred to as ***"the Proprietorship"***, was constructing a project by the name *"Shubhangan"* in Palghar having the address survey No. 626/3, Shirgaon, Phalghar, Thane, hereinafter referred to as ***"1st Project"***. That the Applicant and his wife after considering the abovementioned fact and visiting the site of construction in Palghar, decided to invest in the 1st Project on the basis of the cordial relationship shared between Applicant and Accused No.1. Pursuant thereto, the

Applicant booked 4 flats on the first floor of the said project, namely G-101 and G-102 on G-103 and G-104.

b. That after booking the flats G-101, G-102, G-103 and G-104 in the 1st Project, the Applicant transferred consideration by way of multiple cheques and cash transactions to the tune of Rs. 52,00,000/- (Rupees Fifty Two Lakh only) to the proprietorship, the cheques mentioned herein above were in the name of the Proprietorship. The abovementioned cheques and cash were collected by the accused No. 1 from the Applicant's clinic situated in Kandivali, detailed description of the amounts transferred has also been listed in the FIR No. 9 of 2016 dated 07.01.2016.

c. That thereafter in January 2014, Accused No. 1 informed the Applicant that the progress of the construction of the building under the 1st project was extremely sluggish and the said project would take atleast 4 to 5 years to complete and function as per his initial plan. Furthermore, Accused No. 1 suggested that he had another new redevelopment project in Malad west for which Accused No. 1 had already secured a financer and promised the Applicant that incase the 1st project did not fall through, Accused No. 1 would shift the investments made by the Applicant in the 1st project to his new redevelopment project in Malad West, herein after referred to as ***"2nd Project"*** and would introduce the Applicant with his other partners.

d. Hereafter, the Accused No. 1 further informed the Applicant that he was in need of Rs. 14, 50,000/- (Rupees Fourteen Lakh Fifty Thousand only) for the purpose of paperwork and other formalities in respect of the 2nd Project and Applicant having a cordial relationship with the Accused No. 1 his wife, Applicant decided to lend him funds to the tune of Rs. 14,50,000/- (Rupees Fourteen Lakh Fifty Thousand only). Pursuant to the above, the Accused no. 1 promised the Applicant that in view of the investments made by Applicant in the 1st Project and the loan to the tune of Rs. 14,50,000/- (Rupees Fourteen Lakh Fifty Thousand only) he would make available a flat of 1150 square feet in the 2nd Project, for which Applicant would be required to pay a further consideration of Rs. 35,00,000/- (Rupees Thirty Five Lakh Only) by way of cheque in the name of K.C.D. and Siddharth Life Spaces Pvt. Ltd. (hereinafter referred to as ***"the Company")***.

e. Hereafter, upon enquiry made by that Applicant as to what or who "K.C.D." stood for, Accused no. 1 and Mr. Bharat Bhushan (hereinafter referred to as ***Accused No. 2***) informed Applicant that K.C.D was another individual who was their financer by the name Mr. Rajiv Darji (hereinafter referred to as ***Accused No. 3***) in the 2nd Project and was their third partner.

f. It is pertinent to note that, the Applicant after researching the background of the said KCD obtained the information that the original name of the company was "Siddharth Lifespaces Private Limited" having its Date Of Incorporation on 10 May, 2013. At the time of incorporation, Mr. Vinod Vallabhdas Bathia (DIN 00235297) and Mr. Bharat Omprakash Bhushan (DIN 00624050) were the original directors. Vide company resolution passed in the extra ordinary general meeting dated 15th February, 2014, the name of the Company was changed from "SIDDHARTH LIFESPACES PRIVATE LIMITED" TO "KCD AND SIDDHARTH LIFESPACES PRIVATE LIMITED". Also it was discovered by the Applicant from company master available on the website Ministry of Corporate Affairs , *www.mca.gov.in* that, Mr Rajiv Chandulal Darji was added as a director on 26 December, 2013 and then Mr. Lipton Louis Gonsalves (hereafter referred to as **Respondent No. 1 / *Accused no. 4***) was also added as to position of the Director on 21 January, 2014. Hereto marked and annexed is the Copy of the company master card as ***Exhibit B***.

g. That in furtherance of the above, ***on 04.06.2014 Applicant issued 6 cheques in favour of the Company***

amounting to the tune of Rs. 35,00,000/- (Rupees Thirty Five Lakhs Only) towards the investment in the 2nd Project. The details of the cheques are all part of the captioned FIR and the same can be perused therein. That four of the abovementioned cheques were handed over by the Applicant to the Accused No. 1 and 2 personally from his clinic.

h. That an allotment letter was signed by Applicant's wife at the request of the Accused no. 1 on 15.07.2014 stating that *company* agree to sell to Applicant and his wife a flat admeasuring 1150 sq feet for a consideration of Rs. 80,50,000/- (Rupees Eighty Lakh Fifty Thousand only), out of which Rs. 35,00,000/- (Rupees Thirty Five Lakh only) had already been received by them and out the balance amount of Rs. 45,50,000/- (Forty Five Lakh Fifty Thousand), Rs. 22,50,000/- (Twenty Two Lakh Fifty Thousand) would be given by Vinod Bathia, Accused No. 1 and the remaining Rs. 23,00,000/- (Twenty Three Lakh Only) would be given by Applicant and his wife, Smita Rawal at the time of possession of the said Redevelopment Project.

i. Hereafter, on 16.07.2014 Applicant had executed an MOU with Accused No. 1 and 2 stating that the earlier amounts to the tune of Rs. 57,00,000 (Rupees Fifty Seven Thousand Only), given in view of the *"Shubhangan*

Project" to the proprietor of *"Siddharth Enterprises"* i.e. Mr. Vinod Bathia (Accused No. 1) shall be merged with the current investment in the 2nd Project amounting to the tune of Rs. 1,15,00,000/- (Rupees One Crore Fifteen Lakh only). That the abovementioned Properitor (Accused No.1) is one of the Directors of the Company and incase the Accused No.1 is unable to pay the loan given to him by Applicant amounting to the tune of Rs. 14,50,000/- (Rupees Fourteen Lakh Fifty Thousand only) before the possession of the flat in the Malad Redevelopment Project, the said amount of Rs. 14,50,000/- (Rupees Fourteen Lakh Fifty Thousand only) shall be paid by the Accused No.1 to Company and hence will be adjusted in the final payment of flat in the Malad Redevelopment Project along with the payment of ***Rs. 35,00,000/- (Rupees Thirty Five Lakh only)*** and only a balance amount to the tune of Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousand Only) shall be payable by Applicant and his wife Mrs. Smita Amul Rawal to the Company. Also, that an agreement of sale in respect of the 2nd Project shall be executed before December 2015 and in such events, Applicant and his wife shall hand over the agreement of sale in respect of the 1st Project to the developer as collateral and hence shall have no claim whatsoever on the 4 flats part of the 1st Project.

j. Thereafter the execution of the abovementioned M.O.U., in the month of December 2014 Applicant had again enquired with Accused No. 1 as to when would the registration of the 2nd Project take place to which the Accused No.1 further informed the Applicant that due to some technical difficulties, it would take longer than expected. On further enquiry into the progress of construction of the 2nd Project it was found out that no construction was taking place at the location and deduced that Accused No.1, 2 and 3 even after promising me and executing the M.O.U. had not made any efforts in constructing the said project and Applicant and his wife were given false hopes .

k. That in the last week of December 2014, Applicant met with Accused No. 1 and again enquired in respect of the Rs. 35,00,000/- (Rupees Thirty Five Lakh only) investments made by the Applicant towards the 2nd Project to which the Accused no. 1 again assured him that he would return all of the investments back to Applicant but first Applicant would have to sign on a letter with the letter head of the company stating that the abovementioned redevelopment project had been delayed due to certain technical difficulties and that both Applicant and his wife were aware of the same. After signing the letter Applicant and his wife were further falsely assured that the Accused were working on the redevelopment project and that soon the 2nd project would be complete and the possession of the 2nd project would be given to Applicant in no time.

l. That after the abovementioned incident, Applicant had directed a demand notice dated 12.05.2015, through his previous advocate to all of Accused no. 1, 2 and 3 asking them to return all of the investments amounting to the tune of Rs. 1,02,00,000/- made by Applicant and his wife, Mrs. Smita Rawal for the purchase of both, the "*Shubhangan* Project" in Palghar and the Redevelopment Project at Malad in lieu of the Allotment Letter dated 15.07.2014 and M.O.U. dated 16.07.2014.

m. Thereafter Applicant had received a reply of the abovementioned demand notice on 07.08.2015 denying any existence of both, the Allotment Letter dated 15.07.2014 and the M.O.U. dated 16.07.2014 and further evincing that all the above mentioned transactions had taken place between Accused No.1 and Applicant had been in his personal capacity and had not binding on the Company or its directors.

n. <u>Hence from the above submission it can be deduced that since accused no. 1, 2 ,3 and the Respondent No 1/ Accused No. 4 are all part of the said company as they all are holding the position of the Director in the said</u>

Company, hence all are equally liable and responsible to pay the Applicant the amount of Rs. 35,00,000/- (Rupees Thirty Five Lakh only).

o. Therefore that it was extremely conniving and deceiving on the part of all the Accused to have misappropriated large amounts of funds in an attempt to defraud Applicant and his wife. That all the accused have deliberately misguided Applicant in respect of selling him not one, but two properties in order to fill up their pockets. That the accused were aware from the beginning of the transactions that the same would not get completed on time and have resorted to giving Applicant and his wife false representations that the projects had some technical difficulty due to which they could not be completed on time and had every intensions of not handing over the possession of the two properties to me. That the accused together in connivance with one another have hatched out multiple strategies to dupe Applicant and use the funds for their personal use and the same has caused me immense losses over the period of 3 years and continue to cause me losses till date.

p. It is to be noted that the Accused No. 4 has withdrawn the sum of Rs.10,83,000/- from the Company and he was liable to pay back to the Company. In pursuance of the above mentioned FIR No. 9 of 2016 dated 07.01.2016 the

Accused No. 4 had preferred Anticipatory Bail Application (ABA/38/2016) before the the Hon'ble Sessions Court, Dindoshi, Mumbai. Vide order dated 22 January, 2016, the said Anticipatory Bail Application was rejected by the Hon'ble court. Hereto annexed and marked is the copy of order dated 22 January, 2016 as ***Exhibit C.***

q. In furtherance of the same, the Accused No. 4 had preferred an Anticipatory Bail Application No. 159 before the Hon'ble High Court of Bombay. The Accused No. 4 was granted conditional Anticipatory Bail vide order dated 14.03.2016 with the condition to deposit sum to the tune of Rs. 10,83,000/- (Rupees Ten Lakh, Eighty Three Thousand Only) in a fixed deposit of any Nationalized Bank as he had withdrawn the sum Rs. 10,83,000/- (Rupees Ten Lakh, Eighty Three Thousand Only). Hereto marked annexed is the copy of the order dated 14.03.2016 as ***Exhibit D***.

r. Vide order dated 4 April, 2016 it is recorded that the Accused No. 4 complied with anticipatory bail condition stated in the order dated14.03.2016 of the Hon'ble Court and deposited amount of Rs.10,83,000/- (Rupees Ten Lakh, Eighty Three Thousand Only). Hereto marked annexed is the copy of the order dated 4 April, 2016 as ***Exhibit E***.

s. That the present Application is preferred by the Applicant for seeking permission to withdraw the said amount of Rs.10,83,000/- deposited by the Accused No. 4 from the Registry, Hon'ble High Court, Bombay.

GROUNDS

a. It is humbly submitted that the Applicant is going through financial difficulty and is in urgent need of money. The amount invested by the Applicant in the said Company is a huge sum and the same has been invested out of the savings of the Applicant which is hard earned money earned out of his noble profession of medical practice over 23 (Twenty Three) years.

b. It is submitted that the son of the Applicant, Mr. Harsh Amul Rawal is of marriageable age and is about to get married in a year or two, that the Applicant has been gradually over time saving monies and funds to get his only son married. The hard earned money of the Applicant which were kept as savings has been locked up for over considerable period of three years towards the investment made in respect of the flats in 2nd Project carried out by the said Company, when the said funds could have been easily utilized by the Applicant for the purpose of his only sons marriage.

c. It is further submitted, as mentioned above, the Applicant is having a medical practice over 23 (Twenty Three) years and has an established clinic of his own by the name " Gayatri Maternity and Nursing Home' situated at Charkop, Kandiwali (West). The Applicant further states that all the expenses that are incurred at the Applicant's Nursing home are being borne by him, further the Applicant states that numerous persons are working at his clinic and it is his role and responsibility to issue salaries to all of the people employed by him.

d. That the Applicant further states that apart from all the above mentioned expenses, it is extremely difficult to manage the upkeep of a maternity clinic along with the regular wear and tear of the equipments, the same causes a huge financial burden on the Applicant. that the Applicant is currently going through shortage of funds as he had invested huge sum of money and the same is dead locked for more than 3 (three) years while the Applicant is being left to fend for himself when he could have made absolute use of the funds.

e. As mentioned earlier, the Applicant has his established Maternity Hospital since 27 years which is a quite considerable amount of time. The infrastructure of the said Hospital is due for up gradation and some additions to be made to the already existing infrastructure.

f. Hence it is humbly stated that the Applicant is deprived from utilizing his own hard earned money for the his own benefit as stated above and hence the Applicant has preferred the present Applicant for seeking permission to withdraw the said amount of Rs.10,83,000/- deposited by the Accused No. 4 from the Registry, Hon'ble High Court, Bombay.

In the aforesaid circumstances, the Appellant most humbly prays:

a) That this Hon'ble Court be pleased to accept the present application.

b) That this Hon'ble Court be pleased grant permission to withdraw the amount of 7,25,000/- deposited by Mr. Lipton Gonsalves from the Registry of the Hon'ble Bombay High Courts respectively.

c) That this Hon'ble Court be pleased grant any other prayers as it deems fit and proper.

AND FOR THIS ACT OF KINDNESS THE APPELLANT SHALL AS IN DUTY BOUND EVER PRAYS.

Date: 11th September, 2018
Place: Mumbai

Applicant

Advocate for the Applicant

\\TRUE COPY//

Annexure-P-5

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1118 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 159 OF 2016

Amul Navnitlal Rawal ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

- Mr.Nilesh Tribhuvan for the Applicant.
- Mr.Prashant Jadhav, APP for Respondent No.1-State.
- Mr.Amit D'Souza for Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd FEBRUARY, 2019.

P.C. :

For the reasons recorded separately, the Application is rejected.

[PRAKASH D. NAIK, J.]

True Copy

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P.NO.__________ OF 2019

IN

SPECIAL LEAVE PETITION (CRL.) NO.____________ OF 2019

IN THE MATTER OF:-

Amul Navnitlal Rawal . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . . Respondents

APPLICATION FOR CONDONATION OF DELAY IN FILING THE SPECIAL LEAVE PETITION

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION OF THE ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner has filed Special Leave Petition under Article 136 of the Constitution of India against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay.
2. That the Impugned order was passed on 22.02.2019 but at that time only one line order was passed stating that separate reasons recorded. Actually the reasoned order

was 1st time uploaded in the website of the High Court on 24.05.2019 and that time the Petitioner came to know about the reason of the said order. Kindly see the uploaded date on the reasoned Impugned order at the bottom.

3. That after considering the reasons recorded in the reasoned order dated 22.02.2019, the Petitioner collected all necessary documents from the advocate appeared on behalf of him and after consulted for further proceedings. In the first week of August, 2019 the Petitioner came to know about filing of the present Special Leave Petition before the Hon'ble High Court and thereafter sent all the necessary documents for preparation of present Special Leave Petition at New Delhi.

4. That considering the delay in uploading of the reasoned Impugned Order and collection of necessary documents, present delay has been occurred which neither intentional nor deliberate but purely based on factual aspects. Therefore considering the same the delay may be condoned otherwise great prejudice will be caused to the Petitioner.

PRAYER

The Petitioner, therefore, prays that:-

A) Condone the delay of 91 days in filing the Special Leave Petition against the Impugned Judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay;

B) Pass any other order or directions as this Hon'ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUNDS EVER PRAY.

FILED BY:-

Place : New Delhi
Filed on : 22.08.2019

(ANAND DILIP LANDGE)
Advocate for the Petitioner

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P.NO._________ OF 2019

IN

SPECIAL LEAVE PETITION (CRL.) NO.___________ OF 2019

IN THE MATTER OF:-

Amul Navnitlal Rawal . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . . Respondents

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT

TO

THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUDGES
OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION
OF THE ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner has filed the above Special Leave Petition against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay.

2. That the impugned order was passed on 22.02.2019 and the certified copy there was applied on 22.02.2019 and inspite of all the efforts having been taken by the

Petitioner on that behalf the same has not yet been made ready and available to the Petitioner. The Petitioner, however, was able to obtain the simple copy of the impugned order which is filed herewith. The Petitioner submits that the simple copy of the impugned order be accepted in view of the urgency and the Petitioner may kindly be exempted from filing certified copy.

PRAYER

The Petitioner, therefore, prays that:-

A) The Petitioner be exempted from filing Certified Copy of the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay and the simple copy thereof filed by the Petitioner may kindly be accepted in the interest of justice; and

B) Pass any other order or directions as this Hon'ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUNDS EVER PRAY.

FILED BY:-

Place : New Delhi
Filed on : 22.08.2019

(ANAND DILIP LANDGE)
Advocate for the Petitioner

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRL.M.P.NO._________ OF 2019

IN

SPECIAL LEAVE PETITION (CRL.) NO.___________ OF 2019

IN THE MATTER OF:-

Amul Navnitlal Rawal . . . Petitioner

- Versus -

The State of Maharashtra & Anr. . . . Respondents

APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE SPECIAL LEAVE PETITION OF THE ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner has filed Special Leave Petition under Article 136 of the Constitution of India against the impugned judgment and final order dated 22.02.2019 in Criminal Application No.1118 of 2018 in Anticipatory Bail Application No.159 of 2016 passed by the Hon'ble High Court of Judicature at Bombay.

2. That on 06.02.2019, the Petitioner filed RTI Application before the Public Information Officer, High Court seeking

information from the Registry regarding the money that has been deposited.

3. That on 27.02.2019, considering the RTI Application, the Public Information Officer, High Court answered to the question asked by the Petitioner furnished information regarding deposit and withdrawal of amount. The Petitioner has annexed the said information along with present Special Leave Petition by way of separate application seeking permission to file Additional Documents. **ANNEXURE-P-6** is the True Copy of Letter dated 27.02.2019 along with Annexure-A issued by Officer on Special Duty/Public Information Officer, High Court to the Petitioner. (at Page Nos. 65-67)

4. The above said annexure was made available after the Impugned Order dated 22.02.2019. The above said annexure is necessary for the purpose of adjudication of the present subject matter and therefore, the Petitioner may be permitted to file the same by way of Additional Document.

PRAYER

The Petitioner, therefore, prays that:-

C) Permit the Petitioner to file Annexure-P-6 as an Additional Document in the present Special Leave Petition in the interest of justice;

D) Pass any other order or directions as this Hon'ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUNDS EVER PRAY.

FILED BY:-

Place : New Delhi
Filed on : 22.08.2019

(ANAND DILIP LANDGE)
Advocate for the Petitioner

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Annexure-P-5

O/W.No. 283 /2019
No. R.I.A./166/2019
Dated: 27/02/2019

From: **M.R. Mandawgade**
Officer on Special Duty./Public Information Officer,
High Court, Fort, Bombay - 400 032.

To,

Dr. Amul Navnitlal Rawal
301, Shivneri CHS., Plot No. 252
Sector 5, Charkop,
Kandivali (East),
Mumbai- 400 067.

Subject :- Application under Section 6(1) of RTI Act for Supply of information.

Reference :- Your application dated 06.02.2019 **(registered as R.I.A. No. 166/2019)** received on 06.02.2019.

Sir,

With reference to the subject noted above, I am to state that the information received from the concerned Departments is as under :

<u>As to Point Nos. 3 (i) (1) and 3 (i) (3) :-</u>

"The information sought by the Applicant is enclosed herewith at **<u>Annexure 'A'</u>**.

<u>As to Point No. 3(1)(2):-</u>

"Pendency of Bail and Anticipatory Bail Matters before the Hon'ble Bombay High Court, Appellate Side, Bombay as on 12.02.2019 is as follows:

Bail Applications : 1053,
Anticipatory Bail Applications : 802."

This is towards the information sought by you.

The Appeal against this order lies before the First Appellate Authority i.e. the Registrar (Personal), High Court, Appellate Side, Bombay, Room No. 503, 5th Floor, New Mantralaya Building, G. T. Hospital Compound , Behind Ashoka Shopping Centre, Near Crawford Market, L.T. Marg, Mumbai – 400 001, which can be made, within 30 days of this intimation.

Yours Faithfully,

(M.R. Mandawgade)
Officer on Special Duty /
Public Information Officer,
High Court, Bombay.

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Annexure-A

No.: F & B/Cash/1170/2019
Date: 18 February, 2019

From:

Registrar (Finance & Budget)
High Court, Apellate Side,
Bombay – 400 032

To,

Deputy Registrar/Public Information Officer,
High Court,
Bombay – 400 032

Subject : Supply of Information under the Right to information Act, 2005

Application of Adv Amual Navital Rawal
(RI – 1 – 166 of 2019)

With Reference to your letter (RI – 1 – 166 of 2019) dated 06/02/2019 (received on 13/02/2019) on the subject noted above, I am to inform you the following information as asked for by the applicant:

<table>
<tr><th>Particulars of Information</th><th>Information</th></tr>
<tr><td>Information regarding the amount deposited in the registry in the bail and anticipatory bail and ABA condition in matters are pending before the Hon'ble Court Bombay year wise from the period of 2005 till 5th February 2019.</td><td>
<table>
<tr><th>Year</th><th>Amount deposited (Rs)</th></tr>
<tr><td>2005</td><td>Nil</td></tr>
<tr><td>2006</td><td>Nil</td></tr>
<tr><td>2007</td><td>Nil</td></tr>
<tr><td>2008</td><td>Nil</td></tr>
<tr><td>2009</td><td>Nil</td></tr>
<tr><td>2010</td><td>Nil</td></tr>
<tr><td>2011</td><td>4379468.00</td></tr>
<tr><td>2012</td><td>17289946.00</td></tr>
<tr><td>2013</td><td>11300000.00</td></tr>
<tr><td>2014</td><td>7074439.53</td></tr>
<tr><td>2015</td><td>36810400.00</td></tr>
<tr><td>2016</td><td>138745204.00</td></tr>
<tr><td>2017</td><td>130316698.00</td></tr>
<tr><td>2018</td><td>281410350.18</td></tr>
<tr><td>5th feb 19</td><td>14563,250.00</td></tr>
</table>
</td></tr>
<tr><td></td><td></td></tr>
<tr><td>How many people have made an application before the Hon'ble High Court of Bombay for the withdrawal of money from the registry which were deposited by the accused as a Anticipatory Bail Condition or Bail Condition from 2005 till date.</td><td>
<table>
<tr><th>Year</th><th>Amount deposited (Numbers)</th></tr>
<tr><td>2005</td><td>Nil</td></tr>
<tr><td>2006</td><td>Nil</td></tr>
<tr><td>2007</td><td>Nil</td></tr>
<tr><td>2008</td><td>Nil</td></tr>
<tr><td>2009</td><td>Nil</td></tr>
<tr><td>2010</td><td>Nil</td></tr>
<tr><td>2011</td><td>4</td></tr>
<tr><td>2012</td><td>4</td></tr>
<tr><td>2013</td><td>1</td></tr>
<tr><td>2014</td><td>Nil</td></tr>
<tr><td>2015</td><td>4</td></tr>
<tr><td>2016</td><td>15</td></tr>
<tr><td>2017</td><td>12</td></tr>
<tr><td>2018</td><td>11</td></tr>
<tr><td>5th feb 19</td><td>Nil</td></tr>
</table>
</td></tr>
</table>

1. No. and date of submission of application. RIA/166 of 2019 dtd 6.2.2019
2. The Date fixed for appearance of the applicant. 11.2.2019
3. Date of appearance of applicant. -
4. Date of preparation of information. 27.2.2019
5. Date of supply of information. 27.2.2019
6. Details of fee. Nil

Yours Faithfully,

Registrar
Finance & Budget

Signature of Officer preparing information

True Copy