



**Sevakal & another v Director of Public Prosecution & 4 others (Miscellaneous Criminal Application E039 of 2024) [2024] KEHC 15796 (KLR) (Crim) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15796 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E039 OF 2024  
LN MUTENDE, J  
DECEMBER 16, 2024**

**BETWEEN**

**PATEL DHARMESHKUMAR SEVAKAL ..... 1<sup>ST</sup> APPLICANT**

**DIPTI SUSHIL DIVCHA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**OCS PARKLANDS POLICE STATION ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. Applicants herein approached this court through a Notice of Motion dated 5<sup>th</sup> February, 2024 seeking anticipatory bail pending contemplated arrest or charge and /or action by the respondents and/or their agents.
2. The application is premised on grounds that the applicants were Directors of Armchair Insurance Brokers Limited, a Company that became insolvent and have been summoned by the police and ordered to deposit their passports with the police without any further information or charge. The application is brought with the purpose of enforcing the Bill of rights as enshrined in the Constitution.
3. The applicants have grievances against the actions of the officers of Parklands Police Station for the calls and threats alleged to have been received from PC Isaac Tenai.



4. That they were summoned to the Police Station and their passports were taken away without any reason or information. That the police later visited their office at Muthithi road in Westlands, searched and carried away documents for undisclosed reasons and without bringing any charges against them.
5. That they have received phone calls over the period and ordered to appear before the station with threats that if they do not comply they would disappear. The applicants are apprehensive that the secret actions are informed by a scheme to extort them and that police powers should not be used to harass them. That they must be informed of intended arrest and/or reasons for arresting them.
6. That the respondents' actions violates the right against discrimination and that investigating, harassing, intimidating them with threats of possible arrest, charging and conviction subjected them to violation of their right to dignity. Further, that they should be informed about any decision or action that would adversely affect them.
7. The applicants have deponed that the actions are unreasonable and are contrary to their right against arbitrary deprivation of freedom and the right to access information.
8. The application is supported by an affidavit deposed by Patel Dharmeshkumar Sevakal, the 1<sup>st</sup> applicant, who reiterates what is stated on the body of the application.
9. The application is unopposed. A vigorous and determined attempt by the court to have the 5<sup>th</sup> Respondent appear in court virtually to respond to the accusations was fruitless. This resulted into the court granting the applicants interim personal bonds of Ksh. 200,000/= each.
10. Having considered the application, affidavit in support and the argument raised by the applicants, the issue for determination is whether anticipatory bail should be granted.
11. The applicant herein seeks a special relief of anticipatory bail. Article 22 (1) of the Constitution, 2010 provides that; every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
12. The High court may issue such reliefs that it deems necessary to protect and/or prevent violation of fundamental right and freedoms. In such case, the court must purpose in line with power to enforce the bill of rights and to interpret them in a manner that facilitates enjoyment of a right. This is with an exception of the provisions of Article 24 which provides for limitation of fundamental rights and freedoms.
13. The applicants have cited Article 28 and 29 and have described actions of threatened arrest and detention. That the police also carried away documents without giving reasons of intending to charge them.
14. The burden to demonstrate the claim of constitutional violation lies with the applicant. The *Judiciary Bail and Bond Policy Guidelines* provide that:

“The High Court may grant anticipatory bail, that is, bail pending arrest, provided the applicant demonstrates that his or her right to liberty is likely to be compromised or breached unlawfully by an organ of the State that is supposed to protect this right. Further, the applicant must demonstrate that the apprehension of arrest is real and not imagined or speculative.”
15. The depositions of the applicant's affidavit have not been disputed. It is therefore not challenged that the applicants cooperated with the police when summoned by making appearance. It is not known if the search was carried out with a warrant and whether they had a right to seize documents. This may



be serious violation of right to property. The threats of arrest and confiscating the applicants' passport may also be a violation of right and breach of the respondents' obligation to arrest, investigate and in the process be amenable to give police bond under Article 49 of the *Constitution*.

16. Legally, anticipatory bail is not intended to remain in force perpetually. Typically, anticipatory bail is granted for a specific period. While anticipatory bail may provide significant protection against arrest, it is subject to judicial scrutiny. It cannot be taken to be a lifelong safeguard for an individual.
17. The actions complained of occurred in February 2024. Ten (10) months down the line, there have been no charges filed and there is no evidence that investigations have been ongoing. This casts doubts if indeed the applicants will be arrested and charged.
18. In the upshot, the anticipatory bail granted on interim basis cannot subsist perennially. Therefore, I recall the order of anticipatory bail granted which is now cancelled. In case of fresh threats, the applicants will be at liberty to apply for relevant reliefs.
19. In avoidance of doubt, the application is dismissed.
20. It so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT  
NAIROBI, THIS 16<sup>TH</sup> DAY OF DECEMBER, 2024.**

**L. N. MUTENDE**

**JUDGE**

