

MHCC050067702022



**IN THE COURT OF SESSIONS AT DINDOSHI  
(BORIVALI DIVISION), GOREGAON, MUMBAI**

**ANTICIPATORY BAIL APPLICATION NO.2026 OF 2022**

**IN**

**(C.R. NO. 1709 OF 2022 of Dahisar Police Station)**

**(CNR NO.MHCC05-006770-2022)**

**Abdul Rauf Babumiya Patel alias Sharukh Patel**

**Age : 47 years, Occ : Agent**

**Residing at : Opp. Gupta Compound,**

**Sajay Nagar, Laxmi Nagar Rahiwasi Sangh,**

**MIDC Road No.11, Andheri (East),**

**Mumbai – 400 093.**

**...Applicant**

**Versus**

**The State of Maharashtra**

**At the instance of Dahisar Police Station**

**vide C.R. No.1709 of 2022.**

**...Respondent.**

**Ld. Adv. Sanjay Kolhe for applicant.**

**Ld. APP. Chouhan for Respondent.**

**CORAM : H.H. ADDITIONAL SESSIONS JUDGE**

**SHRI D. G. DHOBLE (C.R. No.7)**

**DATE : 27<sup>th</sup> December, 2022.**

**ORDER**

This is an application under Section 438 of Criminal Procedure Code of applicant for anticipatory bail.

2 The applicant is apprehending his arrest in Crime No.1709/2022 registered with Dahisar Police Station for the offence punishable under Sections 306, 420 of Indian Penal Code 1860.

3 The facts of the prosecution case in short are such that the informant lodged report alleging that in the month of November 2016, he had purchased Mahindra Bolero pickup van bearing No.MH-47-E-1709 by availing loan of Mahindra finance total 48 EMI. Due to ill health of his mother, he went to reside at his native place. It is alleged that he agreed to sale his vehicle to accused Anil Lakdi Gaila and taken Rs.45,000/-(Rupees Five Thousand) from him by executing sale agreement. It was agreed to pay the remaining amount in installment to the Mahindra Finance by accused Anil.

4 Thereafter, surprisingly, he received notice from the Mahindra Finance and learnt that the accused Anil did not pay any installment as agreed upon in between them as per the sale agreement. He made inquiry and learnt that his vehicle is in the possession of present applicant. Accordingly, he lodged the report on the basis of which the crime came to be registered against the accused Anil only.

5 I have perused the bail application, FIR and documents filed therewith and also say filed by the respondent.

6 Heard learned Counsel for the applicant and the APP for the State.

7 The learned advocate for the applicant submitted that the offence

is not registered against the present applicant. The applicant is not in possession of alleged Mahindra Bolero pickup van of the informant. On the basis of hearsay information, as to the fact that the vehicle in question is in possession of the applicant, the police are bent to arrest the applicant. He submitted that the applicant has no any concerned with the alleged vehicle. He has nothing to do with the vehicle of the informant. The same is not in possession of the applicant. Therefore, he may be granted protection from arrest.

8 The learned APP for the state submitted that the Anil with whom agreement to sale had taken place, has not complied with terms and conditions as per the sale agreement, nor paid any installment as agreed upon. During inquiry with the Mahindra Finance Deputy Manager, it is learnt that the alleged vehicle is in possession of the present applicant. Thereafter, the police interrogated with the Anil as well as the present applicant by issuing notice under Section 41(A)1 of Cr.P.C. It is transpired that the present applicant also handed over the alleged vehicle to one Kallu whose address and contact number not known, due to which the vehicle could not be seized. Hence, custodial interrogation of the applicant is required for seizure of the vehicle, she prayed that applicant may be rejected.

9 It is the case of prosecution that the informant had sold the vehicle to the Anil Lakdi Gaila vide sale agreement. According to sale agreement Rs.45,000/- was received to the informant from Anil and handed over the vehicle in question to him. The remaining installment of amount was to be paid to the Mahindra Finance which he failed to do so. Therefore, the Anil committed criminal breach of trust and cheating with the informant. In my considered view, there is sale agreement in

between informant and accused Anil. The applicant has nothing to do with both of them. The transaction appears to be civil in nature in between informant and Anil. The alternate remedy is available to the informant by taking recourse of law.

10 Even if it is assumed that the Anil handed over possession of the said vehicle to the applicant and applicant handed over possession to the Kallu whose address and mobile number is not known, having said that the offence of criminal breach of trust and cheating could not be made out against the applicant. The transaction is of purely civil nature. Admittedly, the vehicle in question is not in possession of the applicant. Therefore, the custodial interrogation of applicant is not required. The purpose of interrogation can be solved by imposing condition to attend the police station. Considering the role attributed to the applicant is concerned, the applicant is entitled for protection to pre-arrest bail. Hence, I am inclined to allow the anticipatory bail application. Resultantly, I pass following order -

### **ORDER**

- 1 Anticipatory Bail Application No.2026 of 2022 is allowed.
- 2 In the event of arrest the applicant Abdul Rauf Babumiya Patel alias Sharukh Patel be released on bail on his furnishing P. R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount in connection with crime No.1709/2022 dtd.5.12.2022 registered with Dahisar Police Station for the offence under section 406, 420 of I.P.C.
- 3 The applicant shall attend concerned Police Station on each

Monday between 10:00 a.m. to 12:00 noon till three months and thereafter as when called for.

4 The applicant shall co-operate to the investigation officer and shall not directly or indirectly make any inducement, threat or promise to any person and shall not tamper prosecution witnesses in any manner.

5 Anticipatory Bail Application No.2026 of 2022 is accordingly disposed of.

Sd/-

**(D. G. DHOBLE)**

Additional Sessions Judge,  
Borivali Div.,Dindoshi, Mumbai.

Dated : 27/12/2022

Directly typed on computer : 27/12/2022  
Checked & Signed by HHJ on : 27/12/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 27/12/2022

Time : 4.24 P.M.

UPLOAD DATE AND TIME

Mrs. P. P. Dabholkar

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Datta G. Dhoble (C.R. No.7)
Date of Pronouncement of JUDGMENT/ ORDER	27/12/2022
JUDGMENT/ORDER signed by P.O. on	27/12/2022
JUDGMENT/ORDER uploaded on	27/12/2022