

MHCC050063622022



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

ANTICIPATORY BAIL APPLICATION NO.1907 OF 2022

IN

(Crime No.271 of 2019 of Vanrai Police Station)

Himesh Dinesh Jain,

Age - 34 years, Occ.- Service,

Residing at : 103, Hari Shivam Apartment,

32/34, J. P. Road, Near Canara Bank,

Andheri West, Mumbai – 400 058.

..Applicant

Vs

State of Maharashtra

(through the P.S.O. of

Vanrai Police Station, Mumbai)

..Respondent

Ld. Advocate Shri. Holambe Patil for the applicant.

Ld. APP Smt. Poornima Chauhan for the State/respondent.

**CORAM : SHRI A.R. QURESHI
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.06.**

DATE : 13th DECEMBER, 2022

ORAL ORDER

1. Applicant namely “Himesh Dinesh Jain,” had moved this application u/s.438 of Cr.P.C. for seeking direction to release him on anticipatory bail apprehending arrest in connection with crime no.271 of 2019 for the offences punishable under section 379, 420, 409, 120(b) r/w. 34 of Indian Penal Code, registered with Vanrai Police Station, Mumbai.

2. Read application, perused report of IO vide Exh.2 i.e. say of prosecution/respondent state. Further perused copy of FIR in crime no.271 of 2019 of the offences under section 379 of Indian Penal Code i.e. about theft of 10 cheques as lodged by complainant Shri. Vasudev Digambar Tikam. Further perused copy of order in the same crime rejecting bail application of Mrs. Pushpa Shah and Mr. Ankush Shah in Anticipatory Bail Application No.1840 of 2022 dated 25.11.2022 and bail order in Anticipatory Bail Application No.1767 of 2022 in the same crime of the applicant Hirachand Hasmukhlal Shah, granting his bail application, and further perused the order of Hon'ble Bombay High Court in Anticipatory Bail Application No.2855 of 2019 of another co-accused Chetan Govind Shinde dated 06.10.2021 in the same crime granting anticipatory bail.

3. Heard learned counsel for the applicant Shri. Holambe Patil and learned APP Smt. Poornima Chauhan for respondent/state. I have further heard IO API Shri. Vichare of police station, Vanrai at some length.

4. Learned counsel for the applicant submits that alleged crime has taken place 3 years back and FIR came to be registered in respect of theft of 10 cheques which were recovered from another accused. Applicant is not beneficiary. Another co-accused Mr. Chetan Shinde is released on anticipatory bail as per order of Hon'ble Bombay High Court vide order in Anticipatory Bail Application 2855 of 2019 dated 06.10.2021. He further submits that another co-accused Hirachand Hasmukhlal Shah is also released on anticipatory bail by this court in the same crime vide Anticipatory Bail Application no.1767 of 2022. Hence, he submits that no custodial interrogation is required. Applicant is ready to co-operate to IO in investigation and submitted to allow this application on the ground of parity also.

5. Per contra learned APP Smt. Poornima Chauhan had strongly opposed this application and submits that custodial interrogation of this applicant is required as there are 151 cheques were stolen by the culprits of the amount of Rs.41,01,127/- (Rupees Forty One Lakhs One Thousand One Hundred and Twenty Seven Only). There are serious allegations, According to her, without custodial interrogation investigation is not at all possible.

6. Furthermore, IO API Vichare also had opposed this bail application, he further submits that 16 accused are released on bail. He also submits that in inquiry of Hirachand Shah who is co-accused is released on anticipatory bail. Hirachand Shah discloses in inquiry that 151 cheques were recovered and that cheques were handed over by the present applicant and lastly submits that, custodial interrogation of the applicant is required.

7. I have carefully perused copy of FIR report of IO vide Exh.2. No doubt at the time of lodging FIR there was only crime registered for the offence punishable under section 379 of I.P.C. Thereafter, offences u/s.420, 409, 120(b) were added during the course of investigation and inquiry. Now admittedly investigation is in progress. There are serious allegations of fraud, cheating and theft of cheques amounting of Rs.41,01,127/- (Rupees Forty One Lakhs One Thousand One Hundred and Twenty Seven Only). IO further submits that, they did not approached even though they were summonsed by police station. There did not came to the police station, nor responding and they are not co-operating in investigation. Therefore, IO submits that without custodial interrogation, investigation is not possible.

8. Learned counsel for the applicant submits that when other co-accused Hirachand Hasmukhlal Shah is released on anticipatory bail by this court, hence, on the ground of parity this applicant may also be released on

anticipatory bail.

9. Learned APP Smt. Poornima Chauhan for the respondent/state further pointed out that other accused person Mrs. Pushpa Shah and Mr. Ankush Shah is anticipatory bail application bearing no.1840 of 2022 has been rejected by this court on dated 25.11.2022 observing that there are no chances of co-operation at the hands of applicant in investigation. However, I further found that custodial interrogation of the applicant is necessary to make effective investigation as prima facie it is case of fraud, cheating of amount of more than Rs.41,00,000/- (Rupees Forty One Lakhs Only) as pointed out by IO as well as learned APP. Moreover I further prima facie found that it being a case of fraud, cheating and having case of lacks of rupees and investigation is in progress, hence, I am of the view prima facie that without custodial interrogation, investigation is not at all possible. Hence, I found that custodial interrogation of the applicant is required to make effective investigation. In such circumstances I am not inclined to allow this application to release the applicant on anticipatory bail in the event of arrest. Therefore, application deserves to be rejected and applicant does not deserve relief as claimed u/sec.438 of Cr.P.C. for anticipatory bail. Hence, I proceed to pass following order.

ORDER

1. Anticipatory Bail Application No.1907 of 2022 u/sec.438 of Cr.P.C. as filed by applicant **Himesh Dinesh Jain**, in Crime no.271 of 2019 of the offences u/s.379, 420, 409, 120(b) r/w 34 of Indian Penal Code, registered with Vanrai Police station, Mumbai is hereby rejected and disposed of accordingly.
2. Order pronounced in Open Court.

3. Proceeding closed.

Dt. 13/12/2022

**(A. R. Qureshi)
Additional Sessions Judge,
Borivali Div.,Dindoshi, Mumbai**

Dictated on : 13/12/2022
Transcribed on : 14/12/2022
Corrected on : 15/12/2022
Signed on : 15/12/2022

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

Date : 15/12/2022

Time : 01.15 P.M.

UPLOAD DATE AND TIME

Ms. R. A. Monde

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ A. R. Qureshi (C.R.No.6)
Date of Pronouncement of JUDGMENT/ORDER	13/12/2022
JUDGMENT/ORDER signed by P.O. on	15/12/2022
JUDGMENT/ORDER uploaded on	15/12/2022