

MHCC050067872022



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

ANTICIPATORY BAIL APPLICATION NO. 2035 OF 2022

IN

(C.R. No. 2367 of 2022 of Sakinaka Police Station, Mumbai)

1) Hitesh Vashram Kundaria,

Age : 35 yrs., Occupation : Business,
R/o : 1103, Girnar Building, Opp. Police Station,
S.V.Road, Dahisar (East),
Mumbai : 400 068

2) Vishal Jayesh Zala,

Age : 31 yrs., Occupation : Business,
R/o : E-002, Shiv Shakti Complex,
S.V.Road, Near Manav Kalyan Kendra,
Dahisar (East),
Mumbai : 400 068

3) Gani @ Krunal Suryakant Bhavsar,

Age : 32 yrs., Occupation : Business,
R/o : B/102, Madhusudhan Building,
Nandanvan Society, S.V.Road,
Near Old Police Station, Dahisar (East),
Mumbai : 400 068

..Applicants

Vs

The State of Maharashtra

(through Sakinaka Police Station)

..Respondents

Ld. Adv. Anurag Mishra, for the applicants.
Ld. APP P.K. Mahajan, for the State.
Ld. Adv. Madan Gupta, for the intervener.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE
R.M. MISHRA
(C.R.NO.4)**

DATE : 02nd January, 2023

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 2367 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 452, 341, 324, 323, 427, 504, 506 read with section 34 of the Indian Penal Code.

2 Perused application and say. Heard learned advocate for the applicants and learned APP for the State.

3 On 19/12/2022 at the instance of one Yash s/o Prakash Jain aforesaid offence came to be registered.

The informant is running a shop ' Nakoda Ply Agency ' along with his father and elder brother. Beside their shop, the applicant no.1 is running his Tiles shop. In the month of March, 2022 the informant and his father had purchased plywood of Rs. 10,00,000/- through the applicant no.1. At that time, it was agreed that the amount would be paid after selling the entire goods. The informant paid Rs. 7,00,000/- out of the entire amount of Rs. 10,00,000/- and remaining amount of Rs. 3,00,000/- was remained to be paid. At the time of the incident i.e.

at about 13.00 hours the applicant no.1 came in the shop of the informant along with his companions. When the applicant no.1 demanded remaining amount of Rs. 3,00,000/-, the informant told that the goods worth Rs. 3,00,000/- yet not sold and asked the applicant no.1 to take back remaining plywood of Rs. 3,00,000/- from the go-down. On this count, the applicant no.1 get annoyed and he started abusing the informant. When the informant told him not to abuse, the applicant no.1 started beating him along with other two co-accused who were accompanied with him by giving fist and kick blows. The applicants also caused beating to the Manager of the informant namely Jitendra Kushwa when he came for rescue of the informant. In the said scuffling the informant lost his golden chain. At that time, the applicant no.1 picked one plywood from the go-down and dealt a blow of stick on the left hand wrist and chest of the informant. All accused persons thereafter, caused the informant and his Manager outside the shop and after applying lock to the shutter of the shop all of them went away from there by taking the key with them and by giving criminal intimidation. After taking treatment in Rajawadi Hospital, Ghatkopar, the informant lodged the report of the incident in Sakinaka Police Station.

4 By this application, the applicants have contended that they are permanent resident of Mumbai and doing the business of Tiles. It is contended that the informant was delivered plywood worth Rs. 4,50,000/- on the credit of the applicant no.1 in April, 2022. However, in view of willful default in the payment of outstanding amount the applicant no.1 went to the shop of the informant along with his partners

i.e. the applicants no. 2 and 3. At that time, the complainant refused to pay outstanding amount and also refused to return unsold plywood and started abusing the applicant no.1. The informant also removed the applicants from his shop. At that time, scuffle took place between them and the informant fallen down over the plywood kept in the shop premises. The applicants no. 2 and 3 tried to solve the dispute but the complainant and his Manager had thrown the applicants from their shop premises. It is further contended that the applicants have been falsely implicated. All the offences are bailable except section 452 of the Indian Penal Code which is not applicable to the facts of the present case. Nothing is to be recovered from the applicants. The applicants are ready to co-operate in investigation and also ready to abide conditions imposed by the court. The applicants, therefore, prayed for their release on anticipatory bail.

5 Application is resisted by the prosecution vide say Exh. 03 mainly on the ground that the statements of the witnesses are going to be recorded. There is possibility of pressurizing the informant and other witnesses and absconding of the applicants if they are released on anticipatory bail.

6 The informant also resisted the application by filing intervenor application.

7 I heard the submissions of learned advocate for the applicants, the intervener and learned APP. I have also gone through

the case diary. Upon careful perusal of the entire facts and circumstances, it reveals that the applicants and intervener are running their respective shops in the neighbouring of each other. It can also be gathered from the attending circumstances that the quarrel happened between them on account of business transaction. It is not disputed that the applicants had been to the shop of the informant for demanding outstanding amount towards credit purchases made by the informant from the applicant no.1. It is also not disputed that other offences are bailable except offence under section 452 of the Indian Penal Code. So far as the applicability of section 452 of the Indian Penal Code as to whether house trespass was committed with preparation for causing hurt or for wrongfully restraining the informant would require adjudication after conclusion of the trial. At this juncture, it is not disputed that the applicants had been to the shop of the informant for demanding outstanding amount. Therefore, at this juncture, it is quite difficult to ascertain the intention of the applicants while considering offence under section 452 of the Indian Penal Code. In fact, as can be seen from the say of the prosecution, nothing is to be discovered or recovered at the instance of the applicants. There is nothing on record to show earlier criminal antecedent of the applicants. No any severe injury is shown in the medical examination report of the injured. Considering all these matters, in my view, purpose will be served if the applicants are granted anticipatory bail by imposing certain conditions. In this view of the matter, following order is passed :

ORDER

1) Application under section 438 of the Code of Criminal Procedure for the grant of anticipatory bail is allowed.

2) In the event of arrest of the applicants **1) Hitesh Vashram Kundaria, 2) Vishal Jayesh Zala, and 3) Gani @ Krunal Suryakant Bhavsar**, in connection with C. R. No. 2367 of 2022, registered with Sakinaka Police Station for the offences punishable under sections 452, 341, 324, 323, 427, 504, 506 read with section 34 of the Indian Penal Code, they be released on bail, on their executing PR Bond of Rs. 15,000/- each (Rupees Fifteen Thousand Only), with one solvent surety in the like amount, on the following conditions-

a) The applicants shall attend the police station as and when called upon and shall co-operate the Investigating Officer whenever required until investigation is completed.

b) The applicants shall not attempt to contact nor shall attempt to pressurize the informant and any other prosecution witnesses nor shall tamper with the evidence of prosecution in any manner.

c) The applicants shall produce the proof of their residence in support the proof of their close relatives to avoid the possibility of their absconding.

- 3) Concerned Police Station be informed accordingly.
- 4) Anticipatory Bail Application No. 2035 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Dt. 02/01/2023

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 02/01/2023
 Transcribed on : 02/01/2023
 Checked on : 02/01/2023
 Signed on : 02/01/2023

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
03/01/2023 at 11.17 a.m. UPLOAD DATE AND TIME	Mrs. S.B. Vichare NAME OF STENOGRAPHER
Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	02/01/2023
JUDGEMENT/ORDER signed by P.O. on	02/01/2023
JUDGEMENT/ORDER uploaded on	03/01/2023