

MHCC050062822022



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

**ANTICIPATORY BAIL APPLICATION NO.1884 OF 2022**

Mr. Kaish Alam Siddique @  
Alam Mohammad Kaish Siddique  
Aged 38 years, Occ.-Service,  
Residing at Hindustan Naka,  
Link Road, Room No.102,  
Opp. Plot No.3,  
Near Manmohan Hotel,  
Bharat Nagar Society,  
Kandivali – West,  
Mumbai -400 067  
accused/Accused

...applicant-

V/s.

The State of Maharashtra  
(At the instance of Malwani Police Station, Mumbai)

.....Respondent

Adv. Kalam Shaikh for applicant-accused/accused.  
APP. Ms. R. S. Kanojia for State/respondent.

**CORAM : H.H. Additional Sessions Judge,  
Shri S. N. Salve.  
Court Room No.15.  
Date : 20<sup>th</sup> December, 2022**

**ORAL ORDER**

This application Under Section 438 of the Code of Criminal Procedure is filed for grant of Bail in anticipation of arrest in the event FIR is registered with Malwani Police Station, Mumbai

at the instance of the informant.

2. Applicant-accused-accused contended that he is peace loving and law-abiding citizen of India. He is born and brought up in Mumbai and at present residing at the address given in the cause title of the application. The informant lodged the report with Malwani Police Station alleging therein that after death of her father the applicant-accused many time visited her house and got closure with her and gradually they entered in relationship. However, the informant has made a written complaint of sexual harassment against him. He contended that he is reputed person working with a reputed company and apprehending his arrest in anticipation of FIR with Malwani Police Station at the instance of report lodged by the informant. According to the applicant-accused-accused, he has not committed the offence as alleged and has been falsely implicated in the crime to be registered against him. According to him, he is permanent resident of Mumbai, so there is no possibility of evading the trial. He undertakes to obey the conditions, if any, imposed by the court. Lastly, he prayed that he be enlarged on bail in the event of his arrest in connection with the report lodged by the informant against him with Malwani Police Station.

3. The prosecution has resisted the application by filing Say (Exh.3) contending that the informant has lodged report with Malwani Police Station alleging therein that the applicant-accused-accused visited the house of the informant, gave her milkshake wherein intoxicant substance was added and after the informant started feeling fainted, the applicant-accused committed forceful sexual intercourse with the informant and after a few days the

informant became pregnant. The prosecution further contended that applicant-accused has recorded video of the relationship in his cell phone. The prosecution further contended that the applicant-accused under the threat of making the video viral, committing forceful sexual intercourse with her. It is submitted by the prosecution that inquiry is going on. It is further alleged that serious allegations made against the applicant-accused. The prosecution, therefore, sought for rejection of the anticipatory bail application.

4. I have heard Ld. Advocate for the applicant-accused and Ld. A.P.P. for the State. The learned advocate for the applicant-accused vehemently argued that applicant-accused is innocent and has not committed the offence as alleged in the complaint/report lodged by the informant with Malwani Police Station. He further argued that there was consensual sexual relationship between the informant and applicant-accused so section 376 of the Indian Penal Code is not attracted. It is further argued by him that even if FIR is not registered, application for anticipatory bail is maintainable. To support his submission, he has relied upon decision in the case of *Union of India V/s Padam Narain Aggrawal Etc. 2008 Legal Eagle 1334*. Lastly, he prayed that applicant-accused be enlarged on bail in anticipation of his arrest.

5. *Per contra*, the learned APP for the State argued that serious allegations are made against the applicant-accused, cell phone in which nude video of the informant is recorded is to be seized. The learned APP, therefore, prayed that application be rejected.

6. Having heard the learned advocate for the applicant-accused and the learned APP for the State, I have gone through the bail application say filed by the prosecution and documents annexed with the application. Admittedly, till date the FIR is not yet registered against the applicant-accused. However, from the say filed by the prosecution, it is very clear that the informant has filed a complaint/report with Malwani police Station alleging therein that the applicant-accused gives some intoxicant substance to her and committed forceful sexual intercourse and also recorded the video in his cell phone. Prima facie, it appears that serious allegations made against the applicant-accused. His custodial interrogation is necessary for the purpose of seizure of the cell phone in which he has recorded the video. There is nothing on record to indicate that the relationship between the informant and the applicant-accused was of consensual. Considering the nature of the allegations made against the applicant-accused and the fact that his custodial interrogation is necessary for recovery of cell phone, I am of the opinion that applicant-accused is not entitled for bail in anticipation of his arrest in connection with the report lodged by the informant.

7. In so far as the decision in *Union of India's case (supra)* is concerned, the facts of the case at hand and the facts in the decision are distinguishable. In so far as the contention of the applicant-accused that 72 hours notice be issued before his arrest is concerned, in *Vijaykumar Gopichand Ramchandani Vs. Amar Sadharam Mulchandani & Ors, Petition for Special Leave to Appeal (CRL) No (s). 9092/2022*, it is held that “direction to the effect that 72 hours notice should be given in the event that the State finds it necessary to arrest in connection with any complaint

pertaining to cognizable offence is manifestly incorrect in law". In view of the above decision, no such direction can be issued.

In the result, the following order is made :-

**ORDER**

1. The Anticipatory Bail Application No. 1884/2022 is rejected.
2. Inform to the concerned Police Station, accordingly.

Dt.20/12/2022

**(S. N. SALVE)**  
Addl. Sessions Judge,  
City Civil & Sessions Court,  
Borivali Division, Dindoshi, Mumbai

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

UPLOAD DATE 23.12.2022  
AND TIME : 12.00 p.m.

Mrs. T. S. Bhogte  
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.15)
Date of Pronouncement of Judgment/Order	20.12.2022
Judgment/Order signed by P.O. on	23.12.2022
Judgment/Order uploaded on	23.12.2022