

MHCC050064502022



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

ANTICIPATORY BAIL APPLICATION NO.1934 OF 2022

IN

C.R.NO.971 OF 2022

1. Kaniraj John Nadar @ Kanibhai Nadar
Age – 46 years, Occ.-Business,
Residing at : Room No.92, Redeemer Church
Chawl, Bhabrekar Nagar, Charkop,
Kandivali (West), Mumbai – 400 067

 2. Deepak Harishchandra Bhandari
Age – 47 years, Occ.- Business
Residing at : Bhabrekar Nagar, Survey No.157,
Industrial Estate, Opp. Krishna Building,
Charkop, Kandivali (West),
Mumbai – 400 06
- ...Applicants

V/s.

The State of Maharashtra
(Through Charkop Police Station, Mumbai)

.....Respondent

Adv. Mr. M. A. Khan for applicants.
APP. Mr. Mahajan for State/respondent.

**CORAM : H.H. Additional Sessions Judge,
Shri S. N. Salve.**

Court Room No.15.

Date : 20th December, 2022

ORAL ORDER

The applicants–accused have filed this application Under Section 438 of the Code of Criminal Procedure for grant of bail in anticipation of arrest in Crime No. 971/2022 registered with Charkop Police Station for the offences punishable Under Section 406, 420, 467, 468, 471 read with section 34 of the Indian Penal Code.

2. The applicants are appealing their arrest on the accusation of having committed offences Under Section 406, 420, 467, 468, 471 read with section 34 of the Indian Penal Code at the instance of report lodged by Mr Kaluram Ragaji Borana alleging therein that in the year 2015, he was in search of home and applicant No.2 contacted him through his friend namely Agatrao Awate and further applicant No.2 informed the informant that he is having his forefather's property and within a year work of building will begin. It is further alleged that prize for 1 BHK flat agreed ₹ 7 lakhs and the said amount was paid by the informant to the applicants in installments from time to time by way of cheques. It is further alleged that applicants and Archana Yogendra Shinde have executed several documents with the informant and later on same were taken back by Archana Shinde from the informant. With these allegations the aforesaid crime came to be registered against them. The applicants contended that they are innocent and they have been falsely implicated in the aforesaid crime due to personal grudges. They contended that there is no element of cheating as entire transaction alleged is not even of commercial in nature. They further contended that Agatrao Awate lodged FIR for the offences punishable under section 406, 420, 467, 471, 474 read with section

34 of the IPC for the same set of allegations wherein the Hon'ble Supreme Court of India was pleased to grant pre-arrest bail to the applicants. They further contended that the alleged transaction dates back to 2015 – 2016 however the informant remained silent 7 years without explaining the delay for approaching the police machinery. They contended that though it is alleged that applicants have got executed some documents for filing civil suit in 2016, however the informant himself has executed power of attorney in favour of the applicants in January 2017. They further contended that no offence as alleged is made out against them. They contended that considering the nature of allegations made against them, their custodial interrogation is unwarranted. They submitted that they are ready to co-operate with the investigation machinery. They are permanent residents of Mumbai so there is no possibility of fleeing away from justice. They, therefore, prayed that they be enlarged on bail in anticipation of their arrest in connection with the aforesaid crime.

3. The prosecution has strongly opposed the application by filing say. It is submitted by the prosecution that the accused by accepting the amount from the informant failed to provide flat to the informant as promised by them. It is further contended by the prosecution that the applicants got executed forged document from the informant. It is further contended by the prosecution that the investigation of the crime is underway. The custodial interrogation of the applicants is required for the purpose of investigation. It is further submitted by the prosecution that if the applicants are enlarged on bail in anticipation of their arrest, they may tamper with the prosecution evidence and possibility of fleeing away from justice

cannot be ruled out. It is further contended by the prosecution that the applicants are having criminal antecedents. On these amongst other grounds, the APP sought for rejection of the anticipatory bail application.

4. I have heard the learned advocate for the applicant – accused. I have also heard the learned APP for the State.

5. The learned advocate for the applicants vehemently argued that there is inordinate delay in lodging the report as the alleged transaction dates back to 2015 – 2016. He further argued that on bare perusal of the report, reveals that no offences as alleged are made out against the applicants. He further argued that in similar set of facts the Hon'ble Supreme Court of India was pleased to grant pre-arrest bail to the applicants. He further argued that there is no need of custodial interrogation. He further argued that the applicants are ready to abide by the terms and conditions to be imposed by the court while granting bail. He further submitted that the applicants are permanent residents of Mumbai so there is no possibility of fleeing away from justice. Lastly, he prayed that the applicants be enlarged on bail in anticipation of their arrest in connection with the aforesaid crime.

6. On the other hand, the learned APP for the State vehemently argued that the offences alleged against the applicants are serious in nature, their custodial interrogation is warranted for recovery of false documents. He further submitted that investigation of the crime is on and if the applicants are enlarged on bail,

committing similar offences and threatening the prosecution witnesses cannot be ruled out. He further submitted that the applicants are having criminal antecedents and having considered the seriousness of the crime, bail application may be rejected.

7. The learned advocate for the Intervenor argued that the applicants-accused induced the informant to pay ₹ 7 lakhs by giving him false promise to provide flat and thereby cheated him. He further argued that it is alleged in the FIR that applicants-accused forged the documents. He therefore prayed that considering the nature of the allegations, bail application be rejected.

8. After having heard the learned advocate for the applicants – accused, learned APP for the State and the learned advocate for the intervenor, I have gone through the application for anticipatory bail, say filed by the prosecution and documents on record. Admittedly, an FIR has been registered against the applicants for the offences punishable Under Section 406, 420, 467, 468, 471 read with section 34 of the Indian Penal Code. From the perusal of the FIR, it appears that nothing is to be recovered from the applicants. Perusal of documents show that the alleged incident occurred in the year 2015 and FIR of the same has been lodged in the year 2022. There is considerable delay in lodging the FIR. In absence of any explanation for such delay, the allegations, prima facie, appears to be doubtful. No case is pleaded in the FIR that since inception the applicants had intention to deceive the informant. The alleged transaction may give rise to civil dispute. It further appears that custodial interrogation of the applicants-accused is unwarranted. The accused is permanent residents of

Mumbai and there is no possibility of fleeing away from justice. Apart from that, there is no question of tampering with prosecution evidence considering the averments made in the First Information Report. It is also pertinent to point out here that the Hon'ble Supreme Court of India in similar set of facts enlarged the applicants on bail in anticipation of their arrest. The facts of the present case are not distinguishable. After having considered the nature and gravity of the accusations, it will be appropriate to grant bail to the applicants in the event of arrest in the aforesaid crime. However, to strike out the balance between the liberty of the applicants-accused and the interest of the prosecution to investigate the crime, it would be appropriate to direct the applicants-accused to attend the Police Station, till filing of the charge-sheet.

In the result, the following order is made :

ORDER

1. Application for Anticipatory Bail No.1934 of 2022 is allowed.

2. The Charkop Police Station is directed that the applicant No.1 Kaniraj John Nadar @ Kanibhai Nadar and applicant No.2 Deepak Harishchandra Bhandari in C.R.No.971/2022 registered with Charkop Police Station for the offence punishable Under Section 406, 420, 467, 468, 471, 474 read with section 34 of the Indian Penal Code, in the event of their arrest, they be released on bail on furnishing P.B. and S.B. in sum of Rs.30,000/- each (Rupees Thirty Thousand Only) subject to following conditions :
 - i) They shall attend the concerned police station from 11:00 am to

03:00 pm on every Sunday, till filing of the charge-sheet.

ii) They shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected, and

iii) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her/him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

3. Applicants shall not leave the jurisdiction of this Court without prior permission of this Court.

4. Breach of any of the conditions shall entail cancellation of bail.

5. Inform to the concerned Police Station, accordingly.

6. Accordingly, application for Anticipatory Bail No.1934 of 2022 stands disposed of.

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 27.12.2022
AND TIME : 3.00 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	27.12.2022
Judgment/Order uploaded on	27.12.2022