

MHCC050063382022



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

ANTICIPATORY BAIL APPLICATION NO.1906 OF 2022
IN
C.R.NO.213 OF 2011

1. Mangala Prasad Rupnarayan Yadav
Adult, Indian Inhabitant, 30 years
2. Smt. Tersadevi Roopnarayan Yadav
Adult, Indian Inhabitant, 61 years
3. Mrs. Urmila Mulayam Yadav
Adult, Indian Inhabitant, 31 years,

All are residing at Ganpat
Patil Nagar, Galli No.4, New Link Road,
Opp. Sardar Vallabh Patel School,
I. C. Colony, Borivali West,
Mumbai – 400 103

.....Applicants/accused.

V e r s u s

**The State of Maharashtra
(Dahisar Police Station)**

...Respondent.

Ms. Anushka Jagtap, Advocate for the Applicants/accused.
Smt. Usha Jadhav, A.P.P for the State.

**CORAM : A.Z.KHAN,
Additional Sessions Judge,
Borivali Division, Dindoshi, Mumbai.
(C.R.NO.13)
Date : 15th February, 2023.**

ORDER

1. The present application is filed by the applicants/accused for the Anticipatory Bail. Perused the application and say thereon vide Exh.2. Heard the learned advocate Ms. Anushka Jagtap for the applicants/accused & the learned A.P.P Smt. Usha Jadhav for the State. I have gone through the case papers, say of the police and the documents. It is seen that the present applicants/accused alleged to have been committed the offences punishable u/s 353 and 427 r/w 34 of the I.P.C in Crime No.213 of 2011 wherein the offence is registered in Dahisar Police Station, Mumbai.

2. It is pertinent to note here that offence came to be registered against the present applicants/accused vide C. R. No.213/2011 with Dahisar Police Station and Charge-sheet is filed bearing C.C.No.2133/PW/2011 wherein the accused were granted bail but the accused failed to appear before the trial court despite they had been given notice dated 27.08.2011 by the Investigating Officer to appear before the trial court on 30.08.2011 whereby the trial court issued Bailable Warrant against the present applicants/accused but the accused failed to appear before the trial court whereby the trial court

issued Non Bailable Warrant against the applicants/accused. Moreover, the application for cancellation of Non Bailable Warrant filed by the applicants/accused is also rejected by the learned trial court.

3. Obviously, the applicants/accused preferred the application for cancellation of Non Bailable Warrant before the trial court but the said application was rejected. The matter was pending since 2011 and the accused alleged to have been committed offence punishable under Sec.353 and 427 r/w 34 of the I. P. C. which required to be committed to the Sessions Court. No doubt, the applicants/accused committed the breach of terms and conditions of the bail granted to them whereby their bail bonds stand cancelled by the trial court and thus, the applicants/accused requires to be surrendered before the trial Court and thereafter, the applicants/accused may file the application for regular bail by mentioning the reasons of their absence etc.

4. However, I do not find any reason that the order passed by Trial Court is having any infirmity or illegality. Per contra the principle and ratio laid down by the Hon'ble Lordships in the case of **Nirbhay Singh Vs. The State of Madhya Pradesh decided on 30 September, 1994 and 2016 ALL MR (Cri) Journal 375 (Chhatisgarh High Court) between Lav Mishra Vs. State of Chhattisgarh** are entirely different and thus, principles and ratio laid down by the Hon'ble Lordships do not assist to the case of the applicants/accused. Per contra, the observations and principles laid down by Their Hon'ble High Court in the case of **(i)Himanshu alias Hemant Rajendra Bhatt Vs. The State of Maharashtra reported in 2014(2)ABR (Cri) 471 (ii)Zubair Ahmad**

Wani Vs. Government of Jammu & Kashmir; AIR online 2022 J and K 606 (iii) Manish Jain Vs. Haryana State Pollution Control Board ; AIR Online 2020 SC 1021 are squarely applicable to the case in hand.

5. In such circumstances, I am of the view that this is not the fit case in which the applicants/accused can be released on anticipatory bail u/s 438 of The Cr.P.C & thus I proceed to pass the following order.

ORDER

The application is hereby rejected.

(A. Z. Khan)

Additional Session Judge,
Borivali Div, Dindoshi,
Mumbai.

Date :- 15.02.2023.

Dictated on : **15.02.2023.**
Transcribed on : **15.02.2023.**
Checked and Signed on : **15.02.2023.**

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

15.02.2023 at 04.50 P.M.
UPLOAD DATE AND TIME

Mrs. Trupti S. Bhogte
NAME OF STENOGRAPHER

Name of the Judge (With Court room no.)

SHRI. A. Z. KHAN
(C.R. NO.13)

Date of Pronouncement of JUDGMENT/ ORDER

15.02.2023

JUDGMENT/ORDER signed by P.O. on

15.02.2023

JUDGMENT/ORDER uploaded on

15.02.2023