

MHCC050066182022



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

**ANTICIPATORY BAIL APPLICATION NO.1976 OF 2022**

**IN**

**C.R.NO.1038/2022**

Mr. Niyaz Ahmed Jinak Manihar  
Aged – 49 years, Occ.-Business  
R/o : Survey No.157/3, Abbasiya Compound,  
Sai Ekta Welfare Society, Azmi Nagar,  
Akashwani, Malwani, Gate No.07,  
Malad West, Mumbai – 400 095  
(Aadhar Card No.822 0177 8910  
Mob : 9324598545

.....Applicant

V/s.

The State of Maharashtra  
(Through Malwani Police Station, Mumbai)  
C. R. No.1038/2022

.....Respondent

Adv. Shri S. R. Dubey for applicant.  
APP. Shri Mahajan for State/respondent.

**CORAM : H.H. Additional Sessions Judge,  
Shri S. N. Salve.  
Court Room No.15.  
Date : 17<sup>th</sup> December, 2022**

**ORAL ORDER**

This is an application filed u/sec.438 of the Code of Criminal Procedure for grant of bail in anticipation of arrest in connection with an offence punishable u/sec.420, 406, 120(b),

506(II) r/w 34 of the Indian Penal Code registered vide C. R. No.1038/2022 with Malwani Police Station.

2. In short, it is the contention of the applicant-accused that he has been falsely implicated in the present crime and he has not committed the offence as alleged against him. It is contended by the accused that no incriminating material or evidence collected by the prosecution to connect him with the alleged crime. It is contended by the accused that he is coming from respectable family and do not have any criminal antecedents and his family is dependent upon him. He undertakes that he will not indulge into similar offence. He has permanent place of residence in Mumbai and there is no possibility of fleeing away. Lastly, he prayed that in the event of arrest, in connection with the aforesaid crime he be released on bail.

3. Prosecution opposed the application by filing say. It is contended by the prosecution that the accused has cheated the informant by giving promise to handover the plot and though the accused has accepted the consideration amount from the informant, he has failed to keep his promise. It is further submitted by the prosecution that investigation of the crime is going on. The prosecution, therefore, prayed to reject the application.

4. Heard Ld. Advocate for the accused and Ld. APP for State.

5. Having heard the Ld. Advocate for the accused and Ld.

APP for State, I have gone through the bail application, say filed by the prosecution, copy of F.I.R and documents annexed with the application. The accused is apprehending arrest in connection with the aforesaid offence. On perusal of the FIR, it is seen that the incident alleged against the accused is of the year 2011. Though the informant lodged complaints with the police authorities but no actions were taken. The informant did not approach the Ld. Metropolitan Magistrate Court promptly seeking direction to register the FIR against the applicant-accused. There is inordinate delay which has not been explained.

7. It is not the case of the prosecution that the applicant-accused had the criminal antecedents. After having considered the allegations made against the applicant-accused, I am of the opinion that custodial interrogation is not warranted. The alleged transaction may give rise to civil dispute. The Ld. Advocate for the applicant also relied upon decision in the case of ***Dilip Singh Vs. State of Madhya Pradesh and Anr. Cri. Appeal No.20/2021*** wherein it is observed at Para No.5 that -

*“It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues.”*

8. It is also pertinent to point out here that similarly placed accused has been enlarged on bail in anticipation of arrest by this Court. The case of the present applicant-accused is not distinguishable from that of the accused enlarged on bail. By applying the principles of parity, the present applicant-accused needs to be enlarged on bail in the event of arrest.

Having considered the nature of the allegations made against the applicant-accused and the fact that custodial interrogation is not warranted, this is a fit case to exercise discretionary power under Sec.438 of Cr. P. C.

In the result, following order is passed.

**ORDER**

- 1) Anticipatory Bail application No.1976 of 2022 is allowed.
- 3) Accordingly, in the event of arrest of applicant, **Mr. Niyaz Ahmed Jinak Manihar** in connection with C.R.No.1038/22 registered with Malwani Police station, he be released on anticipatory bail on execution of Personal Bond of Rs.30,000/- (Rupees Thirty Thousand only) with furnishing one or two solvent sureties of like amount subject to conditions that -
  - i) He shall not directly or indirectly tamper the prosecution witnesses in any manner.
  - ii) He shall report the concerned police station on every Monday in between 2.00 pm to 4.00 pm till filing of the chargesheet or until further order, whichever is earlier.
  - iii) He shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, or to instigate, provoke to others to commit such type of offence; and
  - iv) He 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.

4) Anticipatory Bail Application No.1976 of 2022 is disposed of accordingly.

Dt.17/12/2022

(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 17.12.2022  
AND TIME : 5.45 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	19.12.2022
Judgment/Order signed by P.O. on	19.12.2022
Judgment/Order uploaded on	19.12.2022