

MHCC050066512022



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

**ANTICIPATORY BAIL APPLICATION NO.1994 OF 2022
IN
C.R.NO.1006 OF 2022**

1) Mr. Ovesh Iqbal Musani
Aged about – 32 years,
Muslim, Indian Inhabitant,
Occupation – Service,
Residing at : 304,
Makdhoom Apartment,
Near Mahila Bank,
Hathi Mohalla,
Vasai West 401 201

2) Mrs. Sabera Iqbal Musani
Aged about – 58 years,
Occupation – Housewife
Residing at : 304,
Makdhoom Apartment,
Near Mahila Bank,
Hathi Mohalla,
Vasai West 401 201

.....Applicants/Accused

V/s.

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

.....Respondent

Adv. Jayant Walinjkar for applicants/accused.
APP. Ms. R. S. Kanojia for State/respondent.

**CORAM : H.H. Additional Sessions Judge,
Shri S. N. Salve.
Court Room No.15.
Date : 3rd February, 2023**

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.1006/2022 registered with Malvani Police Station for the offence punishable under Secs.377, 498-A, 406, 323, 504, 506, 34 of the Indian Penal Code (for short, IPC).

2. The applicants-accused have contended that they are innocent persons and have no concern with the alleged offence. They further contended that they are falsely implicated in the crime just to harass them with some ulterior motive. They further contended that they have never harassed the informant and never demanded money from her and therefore, no offence under section 498-A of IPC is attracted against them. They further contended that offence under Sec.377 of IPC is not made out as mere allegations are there in the FIR without details. They further contended that they are having no criminal antecedents. They have contended that they are permanent residents of address stated in the application. They have contended that they are having good reputation in the society and so their reputation would be harmed if they are arrested. They also contended that they would abide by each and every terms and conditions imposed by the Court. They have also contended that there is no need of custodial interrogation and no possibility of tampering with prosecution witnesses, if they are released on bail. On the above stated amongst other grounds, the applicants-accused have sought for their release on anticipatory bail.

3. The Ld. A.P.P. Ms. Kanojia for the State has resisted the application by filing say Exh.3 contending that there is strong prima facie evidence against the applicants-accused. She contended that the applicants-accused are involved in the serious offence. She contended that the applicants-accused were harassing the informant on demand of dowry. She further contended that applicants-accused have committed criminal breach of trust as they did not return the amount which they took for purchasing vehicle. She contended that for the purpose of fair and detail investigation of the crime, their custodial interrogation is necessary for recovery of shridhan and the misappropriated amount. She further contended that if the applicants-accused are released on bail, there is possibility of threatening the informant and witnesses so also it is difficult to police to recover shridhan from applicants-accused. She further contended that custodial interrogation of the applicants-accused is necessary for detail investigation. She contended that the investigation is not yet completed. On these amongst other grounds, the APP sought for rejection of the anticipatory bail application.

4. I have heard Ld. Advocate for the applicants-accused and Ld. A.P.P. for the State. Despite issuance of notice, the informant did not remain present before the Court to oppose the bail application.

5. Having heard the Ld. Advocate for the applicants-accused, Ld. A.P.P. for the State and on going through the FIR, it may be stated that there is no need of custodial interrogation as far as applicants-accused are concerned. This because the offences alleged against are only Secs.377, 498-A, 406, 323, 504, 506, 34 of

the IPC. Considering the nature of the allegations made in the F.I.R. and in view of the decision of Their Lordships of Apex Court in the case of *Arnesh Kumar Vs. State of Bihar, in Cri. Appeal No.1277/2014*, it would be appropriate to grant anticipatory bail to the applicants-accused directing the police not to arrest them in the event of their arrest.

6. In so far as the offence punishable under Sec.377 of the IPC is concerned, mere allegations are there sans details with respect to date, time and place of the alleged act of unnatural intercourse.

7. In so far as recovery of misappropriated amount of the informant is concerned, I do not find that there is need of custodial interrogation for purpose of recovery of the same, in view of the decision of Hon'ble High Court, Mumbai in *A.B.A. No.851/2013 (Mr. Sofin Abbas Patel V/s. State of Maharashtra & Anr.)*, wherein in para 6 it is observed that,

“The counsel for the complainant submits that the jewellery belonging to the complainant is with the applicant and therefore custodial interrogation would be imperative. However, the criminal proceeding is not a recovery proceeding and therefore, the applicant cannot be sent to the police custody for the same.”

8. Thus, in view of the above observations, it can not be said that proceedings under Section 498A/406 IPC are meant for the recovery of jewellery, dowry articles and misappropriated amount. Applicants-accused cannot be denied bail only on the ground that

their release would render the recovery of jewellery and other dowry articles difficult. The informant/wife can, if she so chooses, move the Civil Court for recovery of articles.

9. Furthermore, it appears that the applicants-accused are permanent residents of the address given in the title clause of the application and so there is no possibility of their 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. Therefore, considering the nature and gravity of the accusations, it will be appropriate to grant bail to the applicants-accused in the event of their arrest in the aforesaid crime.

10. For these reasons, to my mind, the applicants-accused are entitled for their release on bail since considering the nature of allegations, I do not find that there is prima facie case to hold that the applicants-accused have committed offence punishable u/s.406 of IPC. 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. Anticipatory Bail Application No.1994 of 2022 is allowed.
2. The Malvani Police Station is directed that the applicant No.1

Mr. Ovesh Iqbal Musani and applicant No.2 Mrs. Sabera Iqbal Musani in C.R.No.1006/2022 registered for the offence punishable under Secs. 377, 498-A, 406, 323, 504, 506 read with Sec.34 of the Indian Penal Code, in the event of their arrest, they be released on bail on furnishing their P.B. and S.B. in sum of Rs.15,000/- (Rupees Fifteen Thousand Only) each subject to following conditions :

(a) The applicants-accused shall attend the concerned police station from 11:00 am to 03:00 pm on each Saturday, till filing of the charge-sheet.

(b) The applicants-accused shall not directly or indirectly make any inducement, threat or promise to any other persons acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court to any other officer.

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

4. Inform to the concerned Police Station, accordingly.

5. Accordingly, Anticipatory Bail Application No.1994 of 2022 stands disposed of.

Dt.03/02/2023

(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 04.02.2023
AND TIME : 1.15 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	03.02.2023
Judgment/Order signed by P.O. on	04.02.2023
Judgment/Order uploaded on	04.02.2023