

ABA 2044/2022 & ABA 2045/2022 ::1::

COMMON ORDER

MHCC050068092022



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

ANTICIPATORY BAIL APPLICATION NO. 2044 OF 2022
(C. R. NO. 822/2021)
(CNR NO.MHCC05-006809-2022)

Mr. Paras Pyarchand Jain,
Age – 49 years, Occ: Gold Smith
Residing at : B-402, ABT Apartment,
Rani Sati Marg, Malad(East),
Mumbai – 400 097.

...Applicant/Accused

V/s.

The State of Maharashtra
(Through Kurar Police Station, Mumbai
C.R.No. 822/2021)

....Respondent

Ld. Advocate Mr. Mr. Aditya Sharma for the Applicant/Accused.
Ld. APP Mr. Imran Shaikh for The State.

AND

MHCC050068102022



ANTICIPATORY BAIL APPLICATION NO 2045 OF 2022
(C. R. NO. 822/2021)
(CNR NO.MHCC050068102022)

Mr. Prakash Pyarchand Jain,
Age – 51 years, Occ:Business,
Residing at : B-402, ABT Apartment,
Rani Sati Marg, Malad(East),
Mumbai – 400 097.

...Applicant/Accused

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COMMON ORDER

V/s.

The State of Maharashtra

(Through Kurar Police Station, Mumbai
C.R.No. 822/2021)

...Respondent

Ld. Advocate Mr. Mr. Aditya Sharma for the Applicant/Accused.

Ld. APP Mr. Imran Shaikh for The State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI. S. Y. BHOSALE
(C.R.NO.13)**

DATE : 4th January, 2022

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In anticipation of arrest in C. R. No.822 /2021 registered with Kurar Police Station for the offences punishable under sections 381, 411 of IPC, the applicants have made these two separate applications for pre-arrest bail.

2. Prosecution vide say Exh. 3 respectively in both the cases resisted the applications.

3. Heard Ld. Advocate Mr. Aditya Sharma for both the applicants and Ld. APP Mr. Imran Shaikh for The State.

4. According to the prosecution, co-accused was serving as made in the house of the informant. On 28/07/2021 the informant found that an amount of Rs. 25,000/- kept in a cupboard were missing. She inquired with the co-accused but she refused. Subsequently, on 22/08/2021 the informant realised that the other gold ornaments in the cupboard are also missing. Therefore, she lodged the first information. During the investigation, co-accused was arrested and the present applicants in anticipation of their arrest made anticipatory bail application No.1222/2021 and No.1223/2021 respectively. At that time, the prosecution had taken a stand that no offence is still registered

against the present applicant and therefore, this court disposed of both the applications on 11/11/2021 directing the police to issue notice of 72 hours to the applicants, if any fresh crime is registered against them or any additional crime registered against the applicants.

5. The investigation Officer has accordingly issued the notice to the present applicants Under Section 41 (A) of Cr. P.C. and the applicants have made these applications. According to Ld. Advocate for the applicants, the crime is of 2021, the charge-sheet is already filed, the applicants have co-operated the Investigation agency by providing them CCTV footage of the shop and providing receipts book. Therefore, according to Ld. Advocate for the applicants, there is absolutely no need of arrest or of custodial interrogation. He relied on the decision of the Hon'ble Supreme Court between **Siddharth V/s. State of U.P. in Criminal Appeal No. 838/2021, decided on 16/08/2021**, to substantiate his argument that personal liberty is an important aspects of our constitutional mandate, and arrest of the accused is necessary only when custodial interrogation is warranted or the crime is heinous.

6. As against this Ld. APP submits that, the charge-sheet is filed not against the present applicants, but, against the co-accused. He admits that, there are some lapses on the part of Investigation Officer for not making the present applicants as an accused at the time of deciding the previous bail application, still according to him, the Court has to consider whether custodial interrogation is necessary or not. According to him, the co-accused has disclosed that she has sold the stolen ornaments worth around Rs. 8,00,000/- to the present applicants. The ornaments are yet to be recovered. Out of stolen cash amount an amount of Rs. 15,000/- has been recovered from the co-accused. Thus, there is justifiable reason to arrest the present applicants for the

purpose of recovery of stolen articles.

7. Ld. Advocate for the applicants in reply submits that, statement of co-accused is not admissible in evidence. He also pointed out that according to alleged statement of co-accused, the applicants paid only Rs. 25,000/-, when the property allegedly taken by the applicants is of around Rs. 8,00,000/- He, therefore, submits that the co-called statement of the co-accused is not believable.

8. After having regard to the facts and circumstance of the case, in light of the arguments it is seen that the first information was lodged on 16/08/2022. The co-accused Arti Manoj Katkar was arrested on 19/08/2021. According to the investigation officer, co-accused disclosed the name of the present applicant as receiver of the stolen property. Thus, if the above information is received from co-accused, it should have been within 15 days from her arrest i.e from 19/08/2021. The previous anticipatory bail application has been decided by this Court on 11/11/2021 that means at the time of deciding previous application No.1223/2021, Investigation Officer had information about the involvement of the present applicant in lodged crime. In spite, the investigation officer made a statement that no crime is registered against the present applicant. The Court accordingly disposed of application No.1223/2021 directing the police to issue 72 hours notice before effecting arrest of the applicant.

9. It is pertinent to note that, on 16/10/2021 the investigation officer informed the Ld. Metropolitan Magistrate about the addition of section 411 of I.P.C. and the notice in question to the applicant was issued on 19/12/2022.

10. From the above chronology of the event it is seen that the

investigation officer inspite of having knowledge about the involvement of the present applicant in commission of offence, filed say in application No.1223/2021 that no crime is registered against the present applicant and thereby allowed the Court to pass order on 11/11/2021. Thus, the role of the investigating officer in the present case appears to be doubtful. Their appears reason to believe that the investigation officer indirectly tried to protect the present applicant, not only this, but on 16/10/2021 the report to the Ld. Magistrate was made for addition of Section 411 of I.P.C. The notice in question issued on 19/12/2022 i.e. after about one year.

11. So far as, the material available against the present applicant is concerned, it is seen that the co-accused has disclosed that, she sold the stolen ornaments to the applicant. It is true that the such a statement of accused is inadmissible against the co-accused. However, that is rule of appreciation of evidence at the time of trial, but there is no bar for the investigation officer to use the information of accused to collect the evidence against co-accused. If the present case is considered with this angle, it is seen that the investigation officer cannot be prevented to use the information of accused for collecting the evidence against co-accused. Thus, their appears reason for the investigation officer to believe that the present applicants are the receiver of stolen property and for recovering all the stolen articles, custodial interrogation is absolutely necessary.

12. Regarding the decision of the Hon'ble Supreme Court and of the Hon'ble High Court relied by the applicant are concerned, it is seen that there is no dispute that personal liberty of a citizen is important and said can be curtailed only in appropriate facts and circumstance of the case. It is also true that just to comply Section 170

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of Cr.P.C., arrest of the accused is not necessary. However, peculiar facts and circumstance of the case, if considered in proper perception, the Court is of the view that, no case to use discretion in favour of the applicant, is made out in the application. Therefore, deserves to be dismissed . Hence, order.

COMMON ORDER

1. Both Anticipatory Bail Application Nos. 2044 of 2022 and 2045 of 2022 stands dismissed and disposed of.
2. Original order be kept in A.B.A. No.2044 of 2022 and its copy be kept in A.B.A. No. 2045 of 2022.

Date: 04.01.2023

(Shrikant Y. Bhosale)

The Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi.

Dictated on : **04.01.2023**
Transcribed on : **09.01.2023**
Checked & corrected on : **10.01.2023**
Signed on : **10.01.2023**
Sent to Dept. on :

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 11.01.2023 Time : 6.10 P.M. UPLOAD DATE AND TIME	Ms. S.S.Chudji (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ S. Y. BHOSALE (Court Room No.13)
Date of Pronouncement of JUDGMENT/ORDER	04.01.2023
JUDGMENT/ORDER signed by P.O. on	10.01.2023
JUDGMENT/ORDER uploaded on	11.01.2023