

ABA 1949/2022

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MHCC050065062022



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

**ANTICIPATORY BAIL APPLICATION NO. 1949 OF 2022
of MIDC Police Station, Mumbai)**

Sameer Salim Mansoori,

Age : 28 yrs., Occ : business,
R/o : B/603, Ebrahim Essa Compound,
Dilshad Castal Building, Opp. Rehan Tower,
S. V. Road, Jogeshwari (W).
Mumbai 400 102

..Applicant

Vs

The State of Maharashtra

(through MIDC Police Station)

..Respondents

Ld. Adv. Ashok Shukla, for the applicant.

Ld. APP P.K. Mahajan, for the State.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE
R.M. MISHRA
(C.R.NO.4)**

DATE : 04th January, 2023

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C.

2 Perused the application and say. Heard learned advocate for the applicant and learned APP for the State.

3 At the instance of one Deepesh Kadam aforesaid offence came to be registered.

According to the applicant, he had purchased Mahindra XUV 500 four wheeler vehicle from one Ziaul Haq for Rs. 5,35,000/-. The said vehicle was initially owned by one Sikandar Patil. However, the said vehicle was met with an accident, therefore, the Finance Company Mahindra & Mahindra recovered the loan of the vehicle from the Insurance Company. Thereafter, said Insurance Company sold out the said vehicle in auction to one Mr. Noor by issuing No objection Certificate. Mr. Noor sold out the said vehicle to Mr. Kadir and Mr. Ziaul Haq had purchased it from Mr. Kadir. Thereafter, in the year 2016, the applicant has purchased the said vehicle from Mr. Ziaul Haq. While the applicant was possessing the said vehicle, in the year 2020 the applicant had misplaced NOC of the said vehicle, therefore, he had lodged complaint about missing of NOC to Bandra Police Station. Thereafter, the applicant sold out the said vehicle to Mr. Awej. At that time, he had informed the said purchaser that NOC of the vehicle has been misplaced of which complaint was also lodged by him. Thereafter, Mr. Awej sold out the said vehicle to the complainant. The applicant came to know that the complainant through his relative who is the officer in MIDC Police Station has lodged the complaint. The complainant is trying to pressurize the applicant to pay him entire amount of Rs. 5,25,000/- which he had paid to Mr. Awej for purchasing the said vehicle. It is contended that the applicant is having apprehension that he would be

arrested by the police. The applicant, therefore, prayed for directing the MIDC Police Station to release him in the event of his arrest if FIR came to be registered. The applicant also prayed for issuing directions to the police to provide notice of 72 hours before arresting the applicant and for directing the police to supply the copy of FIR to the applicant.

4 The prosecution has filed its say at Exh. 03. It is contended that one complaint filed by Deepesh Kadam has been sent to the police station through their superior officer for making enquiry. Accordingly, statement of the complainant has been recorded. However the applicant has not attended to the police station till this date though he was issued notice to remain present in the police station. At present, enquiry is going on. However, yet no any offence came to be registered.

5 After considering the submissions of learned advocate for the applicant and learned APP, I have also gone through the case diary. The learned advocate for the applicant placed reliance on **Sushila Aggarwal and others Vs State (NCT of Delhi) and another SLP (Criminal) Nos. 7281-7282 of 2017 dtd. 29Th January, 2020.** Learned advocate for the applicant referred para 81 of the said Judgment in which the Hon'ble Supreme Court held that this court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438, Cr. PC :

“ (1) Consistent with the judgment in [Shri Gurbaksh Singh Sibbia and others V. State of Punjab](#) 54, when a person complains of

apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his 1980 (2) SCC 565 side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest. ”

6 The learned advocate for the applicant, therefore, vehemently submitted that even if no any offence is yet registered, in view of the lodging of the complaint against the applicant, pre-arrest protection needs to be issued in favour of the applicant under section 438 of the Code of Criminal Procedure.

7 On the other hand, learned APP placed reliance on **Vijaykumar Gopichand Ramchandani Vs Amar Sadharam Mulchandani and Ors. in Petition(s) for SLP (CrI.) No(s). 9092/2022 dtd. 05/12/2022** in which Hon'ble Supreme Court relying upon the ratio laid down in **Union of India Vs Padam Narain Aggarwal & Others** held that direction for giving prior notice to the accused before effecting arrest cannot be issued. It is further held that the directions issued by the High Court that 72 hours notice should be given to the

respondent-accused if State intends to arrest him manifestly incorrect in law.

8 Having regard to the ratio laid down in the case laws cited supra, it is necessary to mention that in the case in hand, yet no any offence has been registered by police. Therefore, the reliefs prayed for in this application for issuing directions to issue 72 hours notice in advance to the applicant cannot be passed in view of the ratio laid down by the Hon'ble Supreme Court in Vijay Kumar (supra). In this view of the matter, following order is passed :

ORDER

- 1) Application under section 438 of the Code of Criminal Procedure for issuing directions as prayed for, is hereby rejected.
- 2) Anticipatory Bail Application No. 1949 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 04/01/2023

Dictated on : 04/01/2023
Transcribed on : 04/01/2023
Checked on : 04/01/2023
Signed on : 04/01/2023

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

04/01/2023 at 5.46 p.m.
UPLOAD DATE AND TIME

Mrs. S.B. Vichare
NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	04/01/2023
JUDGEMENT/ORDER signed by P.O. on	04/01/2023
JUDGEMENT/ORDER uploaded on	04/01/2023