

MHCC050066172022



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

**ANTICIPATORY BAIL APPLICATION NO.1978 OF 2022  
IN  
C.R.NO.1002 OF 2022**

Mr. Shivkumar Ramdular Yadav,  
aged 43 years, Occ.- Business,  
Hindu Adult, Indian Inhabitant of Mumbai  
residing at Malwani Samruddhi CHS Ltd.,  
Building No.17, Room No.104,  
Shivaji Raje Complex, Kandivali (West),  
Mumbai – 400 067

.....Applicant

V/s.

(1) State of Maharashtra  
through Public Prosecutor,  
Bombay City Sessions Court,  
Dindoshi, Goregaon Mumbai

(2) Sr Inspector of Police,  
Charkop Police Station,  
Kandivali (West),  
Mumbai – 400 097

.....Respondents

Adv. Mr. O. R. Tiwari for applicant.  
APP. Mr. Sachin Jadhav for State/respondent.

**CORAM : H.H. Additional Sessions Judge,  
Shri S. N. Salve.  
Court Room No.15.  
Date : 28<sup>th</sup> December, 2022**

**ORAL ORDER**

This is an application Under Section 438 of the Code of Criminal Procedure for grant of bail in anticipation of arrest in Crime No.1002/2022 registered with Charkop Police Station for the offences punishable Under Section 420 and 406 of the Indian Penal Code (for short I.P.C.).

2. Applicant-accused contended that he is permanent resident of Mumbai and residing along with his family at the address given in the title clause of the application. He contended that he has been served with Notice Under Section 41 A (1) of the Code of Criminal Procedure in connection with the aforesaid crime registered at the instance of the report lodged by the informant alleging therein that the applicant-accused agreed to sell his flat number 105 in billing number 17 for consideration of ₹ 3,450,000/- and accordingly entered into a Memorandum of Understanding under which the informant paid a token amount of ₹ 450,000/-. However, the informant disclosed that the said flat has not been transferred in the name of the applicant-accused. It is further alleged that the informant is ready to pay the balance consideration, however the applicant-accused failed to get transferred the said flat in his name and thereby cheated the informant. According to the applicant-accused, he has been falsely implicated in the aforesaid crime and has not committed the offence as alleged by the prosecution. He contended that he agreed to sell the flat to the informant, however, during the Covid-19 the informant lost his job and could not make arrangement for balance consideration. According to the applicant-accused, he has no intention to deceive the informant so section 420 of the I.P.C. is not attracted. According to the applicant-accused, the

present dispute is of civil nature. According to the applicant-accused, there is no need of custodial interrogation. He is ready to abide by the terms and conditions and also ready to render full co-operation to the investigation machinery in the further investigation. He contended that he is permanent resident of address mentioned in the application, so, there is no possibility of fleeing away from justice and evading the trial. Lastly, he prayed that he be enlarged on bail in anticipation of his arrest in connection with the aforesaid crime.

3. The prosecution has strongly opposed the application by filing say. It is submitted by the prosecution that the applicant-accused by accepting the amount from the informant failed to pay the same and thereby cheated the informant. It is further contended by the prosecution that the investigation of the crime is underway. The custodial interrogation of the applicant-accused is required for the purpose of investigation. It is further submitted by the prosecution that if the applicant-accused is enlarged on bail in anticipation of his arrest, he may tamper with the prosecution evidence and possibility of fleeing away from justice cannot be ruled out. On these amongst other grounds, the APP sought for rejection of the anticipatory bail application.

4. I have heard the learned advocate for the applicant – accused. I have also heard the learned APP for the State.

5. After considering the rival submissions, it would be appropriate to grant bail to the applicant-accused for the following reasons:

**First reason,** there is considerable delay in lodging the FIR, as the alleged offence according to the case of the prosecution occurred in the year 2019.

**Second reason,** it is not the case of the prosecution that recovery is to be made from the applicant-accused.

**Third reason,** no case is pleaded in the FIR that since inception the applicant-accused had intention to deceive the informant.

**Fourth reason,** the alleged transaction may give rise to civil dispute.

**Fifth reason,** it is not the case of the prosecution that the applicant-accused is having criminal antecedents.

**Sixth reason,** the offences alleged against the applicant-accused are not punishable with death or imprisonment for life.

**Seventh reason,** applicant-accused is permanent resident of Mumbai, so there is no possibility of fleeing away from justice.

**Lastly,** there is no need of custodial interrogation of the applicant-accused.

6. 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 applicant-accused in the event of arrest in the aforesaid crime. However, to strike out the balance between the liberty of the

applicant-accused and the interest of the prosecution to investigate the crime, it would be appropriate to direct the applicant-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.1978 of 2022 is allowed.
2. The Charkop Police Station is directed that the applicant-accused in C.R.No. 1002 /2022 registered with Charkop Police Station for the offence punishable under 420 and 406 of the Indian Penal Code, in the event of his arrest, he be released on bail on furnishing his P.B. and S.B. in sum of Rs.15,000/- (Rupees Fifteen Thousand Only) subject to following conditions :-
  - (a) The applicant-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.
  - (b) The applicant-accused shall attend the concerned police station from 11:00 am to 03:00 pm on each Tuesday, and as and when directed by the Investigating Officer under written intimation till filing of the charge-sheet or until further order whichever is earlier.
  - (c) The applicant shall not leave India without the prior permission of this Court.
3. Breach of any of the conditions shall entail cancellation of bail.
4. Inform to the concerned Police Station, accordingly.

5. Provisional Cash Bail allowed for one month.

6. Accordingly, Anticipatory Bail Application No.1978 of 2022 stands disposed of.

Dt.28/12/2022

**(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 02.01.2023  
AND TIME : 11.15 a.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	28.12.2022
Judgment/Order signed by P.O. on	02.01.2023
Judgment/Order uploaded on	02.01.2023