

ABA-2048/2022

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MHCC050068252022



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

**ANTICIPATORY BAIL APPLICATION NO. 2048 OF 2022
(CNR NO. MHCC05-006825-2022)**

IN

(C.R. NO. 1319 OF 2022 of Kasturba Marg Police Station)

Tribhuvan Jayalala Dhuria

Age : 44 years, Occ : Nil.

Residing at : A/604, Harsh Niketan,

Opposite Maharaja Hotel,

Ghartanpada No.02

Dahisar (East), Mumbai – 400 068.

...Applicant

Versus

The State of Maharashtra

At the instance of Kasturba Marg Police Station

vide C.R. No.1319 of 2022.

...Respondent.

Ld. Adv. Bhola S. Rai for applicant.

Ld. APP. Usha Jadhav for Respondent.

**CORAM : H.H. ADDITIONAL SESSIONS JUDGE
SHRI D. G. DHOBLE (C.R. No.7)**

DATE : 9th January, 2023.

ORDER

This applicant is seeking anticipatory bail under Section 438 of Criminal Procedure Code (Cr.P.C.) in connection with C.R. No.

1319/2022 registered with Kasturba Marg Police Station, Mumbai under Sections 406,420, 465, 467, 468, 471 of Indian Penal Code 1860 (in short IPC).

2 The prosecution story in nutshell is that the informant's company named India Metal is located in Khopoli and is engaged in the business of dealing scrap trading. The informant met applicant who is director of Dhuriya Offshore Sea Engineering Private Limited Company through agent. The informant decided to buy the cargo padav from the applicant for Rs.4 Crores 20 Lakhs. Accordingly, on 13/10/2021, the informant transferred Rs.1,01,000/- as token security amount from his ICICI Bank account to the applicant's company's State Bank of India account through RTGS. Thereafter, on 26/10/2021, the applicant gave a copy of the letter of Venkatesh Engineers and Contractors Private Limited Company to the informant. In that letter, it was stated that the applicant's company was appointed as the custodian in respect of the sale of cargo and that all the amount should be deposited in the State Bank of India account of the applicant's company. At that time, the applicant said that the original copy of the said letter was coming by courier from Nagpur. It is alleged that Rs. 19,00,000/- was transferred to the account of the applicant's company through RTGS after gaining the confidence of the informant from the said letter.

3 The applicant wrote on the letterhead about accepting the total sum of Rs.20,01,000/-as security deposit. It was assured that scrap cutting work will be done after fifteen days. But after completion of prescribed period the applicant started to avoid to perform his part. The original letter was also not given. After suspecting fraud and repeated demand Rs.5 Lakhs was deposited in the informant 's account.

Thereafter the applicant repeatedly refused to pay the remaining amount. The informant went to Ghodbunder Road himself and inquired with the director of Venkatesh Engineering and Contractors Company, who is the original owner of Padava, who said that he had not appointed anyone as a custodian of his padav cargo. At that time, the informant was convinced that he had been cheated by showing the forged letter of Venkatesh Engineer Contractors Private Limited Company. Upon report offence came to be registered.

4 The applicant apprehending with arrest has filed the present anticipatory bail application. The Ld. Counsel for the applicant has argued that the applicant has been implicated in a false case. The letter of appointment given by the applicant as custodian in respect of the sale of cargo Padav is true and not fabricated. The applicant handed over Rs.5 Lakhs back to the informant and issued a cheque for the remaining amount. The said case has also been filed due to dishonour of cheque by the informant. Therefore, the alleged offense is registered only as a shortcut method to harass the applicant. The applicant is still ready to pay the remaining amount and is also ready to give the original letter of custodianship to the police. The applicant is permanently staying at the given address and there is no fear of absconding. So the applicant should be granted bail.

5 The respondent has opposed the application by filing a reply. The Ld. public prosecutor has argued that the applicant committed financial fraud by creating a fake letter claiming to be a custodian and gaining the trust of the informant by inducing him to pay the amount in his account. The investigation revealed that the documents were forged. Therefore, it is necessary to investigate the

basis of which the fake document was prepared and the tools used. The amount taken by the applicant is to be seized. The another case has been registered against the applicant at Jogeshwari Police Station vide Crime No. 184/22 under Sections 353, 504 of I.P.C and the applicant has been sentenced to imprisonment for 3 months and a fine of Rs.50,000/- under Section 138 of Negotiable Instrument Act. He submitted that the applicant neither attended the police station nor deposited the amount as assured by him while granting interim protection. Therefore, it is requested that the application of the applicant be dismissed.

6 I have considered the submission and perused the investigation paper and material available on record. The applicant is the director of Dhuria Offshore Sea Engineering Private Limited Company. The goods cargo Padav is owned by M/s. Venkatesh Engineers and Contactors Private Limited. It is clear from the statement taken by the police that the applicant had given a forged letter to the informant stating that M/s. Venkatesh Engineers & Contractors had appointed the applicant's company as custodian in connection with the sale of goods cargo Padava. When the police recorded the statement of the director of the company M/s.Venkatesh Engineers and Contractors, he clearly stated that he had not appointed anyone as a custodian in connection with the sale of his owned cargo padav and that the documents given to the informant was fake. Therefore, it is necessary to investigate the basis on which the said letter was prepared by the applicant and it is also necessary to seize the tools used to make fake documents from the custody of applicant. The amount taken dishonestly from the informant of Rs. 15 Lakhs, is also yet to be recovered. On that count the custody of the applicant is required.

7 The Ld. Public Prosecutor has pointed out that the applicant has cheated many people in this way. The applicant is habitual offender. One case has been registered against the applicant at Jogeshwari Police Station. Further the applicant has been sentenced to 3 months imprisonment in one case bearing No. 2013/2018 under Section 138 of Negotiable Instrument Act. The alleged offence is economic in nature and the applicant has dishonestly cheated informant. The applicant is not living at his addresses but has absconded. Therefore, the possibility of absconding cannot be ruled out if bail is granted. There is substance in the argument of Ld. APP for the State.

8 Further, this Court vide order dated 30/12/2022, granted temporary bail upon the applicant's undertaking regarding giving the original letter to the police and depositing Rs.15 lakhs with the police, and thereby directed the applicant to appear each and every day in between 1:00 P.M. to 5:00 P.M. and to cooperate as per the given undertaking. But in the additional reply given by the respondent, it has been stated that the applicant did not appear as per the order of this court and nor deposited amount as per undertaking. This is also additional ground not to exercise discretion in favour of applicant. That is why it is necessary to thoroughly investigate the case. If the applicant is granted bail, the possibility of absconding cannot be ruled out. Prima facie there appears dishonest intention on the part of applicant. The said offense is of a serious nature and the custody of the applicant is required to seize the proceeds of the crime as well as the instruments used in connection with the forged letter, hence the applicant is not entitle for anticipatory bail. Hence, I am passing the following order.

ORDER

- 1 Anticipatory bail application No. 2048 of 2022 stands rejected.
- 2 Earlier interim order Dated 30/12/2022 stands vacated.
- 3 Accordingly Anticipatory bail application disposed off.

Sd/-

(D. G. DHOBLE)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai.

Dated : 09/01/2023

Directly typed on computer : 09/01/2023
Checked & Signed by HHJ on : 10/01/2023

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

Date : 11/01/2023
Time : 3.15 P.M.
UPLOAD DATE AND TIME

Mrs. P. P. Dabholkar
(Stenographer Grade-I)
NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Datta G. Dhoble (C.R. No.7)
Date of Pronouncement of JUDGMENT/ ORDER	09/01/2023
JUDGMENT/ORDER signed by P.O. on	10/01/2023
JUDGMENT/ORDER uploaded on	11/01/2023