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ABA.1871/2022

MHCC05-006236-2022



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

ANTICIPATORY BAIL APPLICATION NO.1871 OF 2022
(CNR NO.MHCC05-006236-2022)

Mohit Rakesh Jain

Aged : 39 years,

Residing at : Room No.12, C-wing,

Second floor, Ishwar Niwas building,

V.P. Road, Opp. Fadke Mandir, Sika Nagar,

Girgaon, Mumbai - 400 004.

...Applicant/Accused

V/s.

State of Maharashtra

Through Borivali Police Station

....Respondent

Ld. Advocate Raghava for the Applicant/ Accused.

Ld.APP Shri Panchpohar for the State.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI N.L.KALE

(C.R.NO.14)

DATE : 30th November, 2022.

O R D E R

This is an application u/s.438 of the Criminal Procedure Code 1973 filed by the applicant for seeking Anticipatory Bail in C.R.

No.1525/2022 registered at Borivali Police station, for the offences under sections 452, 323, 143, 147, 427, 448, 504 & 506 of the Indian Penal Code, 1860.

Brief facts which gives rise to file the present application are as under: -

2. That, the applicant owned a Hotel at Shop No.2, Arvali Business Center, Ramdas Sutrale Marg, Borivali (W), Mumbai. He has given his said Hotel to Preeti Mange, Jay Mange and Girish Mange by executing leave and license agreement, for a period of 11 months.

3. Complainant Arjun Bhanushali is working as a Manager in the said Hotel. On 17/11/2022, complainant started the said Hotel as usual, at 10:00am. At about 12:00 noon , 11 unknown women came in the Hotel as a customer. They sat on different tables. Those women gave an order of breakfast. After completing a breakfast, all the women were sitting in the Hotel itself and hence a waiter asked them as to why they are sitting there without any reason? Those women told to the waiter that, they want to take Lunch there itself.

4. At about 3:00 O'clock when those women were sitting there, 5 to 6 unknown persons entered in the Hotel. The complainant asked them as to why, they came there? Those persons told that, Mohit Jain (The present applicant) has sent them to cause

damage to the said hotel. Those persons started giving abuses to the complainant and asked him to vacate the said hotel. It is alleged further that, those persons and the women who were sitting there caused heavy damage to the furniture present inside the hotel and to hotel also. They caused beatings to the complainant and hotel staff also.

5. After the above incident, the complainant lodged a report with Borivali Police. Then police registered the present crime against the unknown persons and the present applicant.

6. By filing this application, the applicant is seeking pre-arrest bail to him. According to him, he has not committed any crime as alleged. He alleged further that, his licensees not paid a license fee of said hotel to him for a long period and hence, he terminated the agreement executed by him in respect of the said hotel. According to him, he is no concerned with the incident in question. He is ready to co-operate with the investigation. According to him he has been falsely implicated, because he has terminated the agreement executed by him.

7. This application is strongly opposed by prosecution by filing reply vide Exhibit-02. According to the prosecution the investigation is in progress and it is transpired that, the applicant had sent unknown persons and women to the said hotel to get vacated

the same. According to prosecution the applicant may tamper the prosecution evidence / witnesses.

8. Ld. advocate appearing for the applicant submitted that, admittedly, at the relevant time the applicant was not present on the spot of the offence. He submitted further that, offence in question is committed in hotel and hence, section 452 of IPC is not applicable. He submitted further that, except section 452 of IPC all the offences alleged are bailable in nature and nothing is to be seized or recovered from the applicant. He prays to allow the prayer.

9. On the contrary Ld. Adv. Shri Panchpohar submitted that, offence u/s 452 of the IPC is non bailable and investigation is going on. According to him due to instigation of this application other co-accused committed the offence in question. He prays to reject the prayer.

10. Ld. advocate of the applicant relied upon termination notice dtd.11/11/2022 given by the applicant to Girish Mange. He also relied upon complaint given by the applicant dtd. 16/11/2022 to Borivali Police station and reply dtd. 18/11/2022, given by police upon his said complaint. He submitted that, the applicant had filed a complaint against the licensees to get possession of his hotel and the applicant has not taken a law in his hand. He submitted further

that, at the relevant time applicant was not present on the spot and hence, section 452 of the IPC not applicable to him.

12. Ld. advocate of the applicant relied upon the findings recorded by Hon'ble Bombay High Court in the matter of Smt.Kantabai Pande v/s State of Maharashtra (Cri. appeal No.238/2022). The facts in that matter are totally different one. In that matter, an offence u/s 14 A of SC/ST Act was alleged to be committed. Hence, those findings are not applicable to case in hand.

13. Ld. advocate of the applicant further relied upon the findings recorded by Hon'ble Bombay High Court in the matter of Akbat Kaimat Jaan Pasha & Anr. V/s State of Maharashtra reported in 2016 ALL MR (Cri.) 2435. In this matter Hon'ble Bombay High Court granted Anticipatory Bail to the applicant therein. In that matter also, except offence u/s 452 of the IPC and 506 (2) of the IPC, other offences are bailable. There were allegations against the applicants that, they participated in the crime of throwing bottles on the Road violently. The findings in the above matter are squarely applicable in favour of the applicant. Here the applicant was not present on the spot at the time of commission of the offence in question. Hence, in view of the findings recorded by Hon'ble Bombay High Court in the above matter, the applicant herein is entitled to get Anticipatory Bail for him.

14. On perusal of a complaint and say filed by I.O. it appears that, at the relevant time the applicant was not present on the spot. The allegations against the applicant are that, he sent the other co-accused at the said hotel to cause damage to it. But to prove this fact no any reliable evidence is filed on record by the prosecution.

15. Nothing is to be seized or recovered from the applicant, in connection to the crime. Except section 452 of the IPC all the offences alleged are bailable in nature. Whether the applicant had sent or instigated the other co-accused to cause damage and beatings on the spot? This aspect required detail investigation. For that purpose, physical presence of the applicant with police is not necessary. Police may obtain or collect an information or evidence regarding a participation of the applicant in alleged crime, through witnesses and other sources. Considering all the above aspects, custodial interrogation of the applicant by police is not necessary.

16. Moreover, the documents filed by the applicant shows that, this applicant had lodged a report with police against his licensees to get possession of his hotel. But, police closed the said complaint by informing the applicant that, his dispute is of civil in nature. Hence, it can be said that, the applicant adopted a due process of law to obtain possession of his hotel. Hence, if the applicant is released on Anticipatory Bail, by imposing conditions upon him, then, the purpose will be fulfilled. Hence, I pass following

order:

ORDER

1. Anticipatory Bail Application No.1871 of 2022 is allowed.
2. In the event of arrest of, **Applicant namely Mohit Rakesh Jain be released on bail, on executing P.R.Bond of Rs.15,000/- (Fifteen Thousand Only), with surety bond of like amount by him,** in C.R. No.1525/2022, registered at Borivali Police Station, punishable under sections 452, 323, 143, 147, 427, 448, 504 and 506 of the Indian Penal Code, 1860.
3. The Applicant is directed to co-operate with the investigation machinery.
4. The Applicant is further directed to attend concerned police station on every Friday in between 10:00am to 12:00noon, till filing of charge-sheet.
5. The Applicant is further directed not to tamper or hamper with the prosecution evidence and witnesses in any manner.
6. Anticipatory Bail Application No.1871 of 2022 is disposed of accordingly.

(Order pronounced in open Court)

Date: 30.11.2022

(N.L.KALE)

**THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Order dictated on : 29.11.2022
Order transcript on : 29.11.2022
Checked, corrected & Signed on : 30.11.2022

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

UPLOAD DATE

AND TIME : **30.11.2022** at 05.15 P.M.

Mrs. Madhura M. Palav

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri N. L. Kale (Court Room No.14)
Date of Pronouncement of Judgment/Order	30.11.2022
Judgment/Order signed by P.O. on	30.11.2022
Judgment/Order uploaded on	30.11.2022