

MHCC050061242022



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

**ANTICIPATORY BAIL APPLICATION NO. 1833 OF 2022
of MIDC Police Station, Mumbai)**

Lokendra Mishra S/o. Sudhir Kumar Mishra,
Age : 30 years, Occupation : service,
R/o : Flat No. 502, 5th Floor, Bldg. No. 23,
Evershine Millennium Paradise, Thakur Village,
Kandivali E. Mumbai 400 101

..Applicant

Vs

The State of Maharashtra
(through MIDC Police Station)

..Respondents

Ld. Adv. R.C. Pandey, for the applicant.
Ld. APP R.C. Sawale, for the State.

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

DATE : 25th November, 2022

ORAL ORDER

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

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

3 By this application, the applicant has contended that he is serving as Senior Vice President in Advantage Club, Andheri and residing at Kandivali (E). The applicant is having aged mother who is heart patient. It is further contended that the complainant/victim has lodged complaint with the MIDC Police Station by contending that she was in physical relations with him since 2021 and she is apprehending that the applicant wants to marry with some other girl and he has performed engagement ceremony. According to the applicant, on that count she has lodged the complaint against him. The applicant has further contended that the complainant/victim is married lady and divorce proceeding is going on between the complainant/victim and her husband which is pending in Family Court, Bandra. The complainant/victim is also having a daughter aged about nine years.

4 While claiming pre-arrest protection under section 438 of the Code of Criminal Procedure, the applicant has contended that on 15/11/2022 at about 13.00 hours, he received a call from Police Officer Roshani Kishor Chavan, MIDC Police Station that the complainant/victim has lodged the complaint against the applicant that she is in physical relations with him and the applicant wants to marry with some other girl and he has also performed engagement ceremony with that girl. Though he made enquiry regarding the said complaint, no information has been furnished by Roshani Kishor Chavan. The

applicant has contended that he is called upon to remain present in the police station. The applicant has also received message of the aforesaid complainant/victim from her mobile. It is contended that said complainant/victim is blackmailing him by sending messages and issuing threats that she would come in the office and would inform his boss and colleagues. The complainant/victim also contacted with the girl with whom the applicant wants to marry.

5 During the course of arguments, learned advocate for the applicant submitted that the applicant has not committed any such crime. Nothing is to be recovered from his possession by way of custodial interrogation. He has no earlier criminal antecedents. If the applicant is arrested he will have to lose his permanent job which is only source of income to maintain his family. He is ready to abide the conditions imposed by the court. Learned advocate for the applicant, therefore, vehemently submitted that the applicant may be released on anticipatory bail.

6 On the other hand, relying on the say Exh. 3 by the Investigating Officer, learned APP submitted that on 15/11/2022 aforesaid complainant/victim has lodged complaint against the applicant in MIDC Police Station. However, no any cognizable offence is yet registered in the police station. The applicant would be informed by issuing notice of 72 hours in advance if the offence is registered and the applicant is required to be arrested.

7 Learned APP submitted that even if no offence is registered against the applicant, no any such blanket order can be issued by way of pre-arrest protection. In support of his submissions, learned APP placed reliance on **Shri Sahajanand Investments Pvt. Ltd. Vs State of Goa and Anr. [2013 ALL MR (Cri) 1347]**. Learned APP, vehemently submitted that in the light of the ratio laid down in this case, the application is liable to be rejected.

8 In the light of the respective submissions, I have carefully gone through the material available on record. As contended by the applicant in his application, the prosecution has specifically contended in its say Exh. 03 that on 15/11/2022 aforesaid complainant/victim has lodged the complaint against the applicant in the police station. However, as can be seen from the say of the prosecution till this date no any offence has been registered against the applicant though the complaint was filed on 15/11/2022. In this background, I have carefully gone through the observations and ratio laid down in the case law cited (supra). Upon careful perusal of the observations laid down in the said case, it reveals that the original complainant/petitioner had filed the said writ petition against the order of the Additional Sessions Judge whereby the respondent no.1 was directed to give notice of 48 hours in case crime is registered against the respondent no. 2. Accordingly, anticipatory bail application was disposed of.

9 The Hon'ble Bombay High Court set aside the order of learned Additional Sessions Judge and thereby disposed of the said writ

petition. However, upon careful consideration of the observations made by the Hon'ble High Court, it reveals that in para 8, the Hon'ble High Court observed that the petitioner filed an application under section 156 (3) of the Code of Criminal Procedure in the Court of Judicial Magistrate, First Class, Panaji alleging commission of offence under section 420 read with section 34 of the Indian Penal Code by respondent no.2 in each of the petitions. The Hon'ble Bombay High Court, therefore, held that in the event an order on the application under section 156 (3) of the Code of Criminal Procedure is passed by the Magistrate, Investigating Officer will not be able to arrest respondent no.2 without giving notice in view of the order passed by the Additional Sessions Judge in the aforesaid anticipatory bail applications. Therefore, he has locus to file the present petitions.

10 It is, thus apparent that in the said case (supra), the original complainant/petitioner had filed the application under section 156 (3) of the Code of Criminal Procedure before learned JMFC, therefore, the order passed by the Additional Sessions Judge came to be set aside by the Hon'ble Bombay High Court. However, in the present case, facts are different and nature of offence is also different as compared to the facts of the aforesaid case cited (supra). In view of not registering any cognizable offence against the applicant, in my view, the Investigation Officer can be directed to issue notice of 72 hours in advance if any such cognizable offence came to be registered at the instance of aforesaid complainant/victim. In this view of the matter, following order is passed :

ORDER

- 1) It is hereby directed that in the case of registration of crime in connection with the report lodged by the complainant/victim with MIDC Police Station, 72 hours notice be issued to the applicant, before effecting his arrest.
- 2) Anticipatory Bail Application No. 1833 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 25/11/2022

Dictated on : 25/11/2022
 Transcribed on : 25/11/2022
 Checked on : 25/11/2022
 Signed on : 25/11/2022

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

28/11/2022 at 1.05 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	25/11/2022
JUDGEMENT/ORDER signed by P.O. on	25/11/2022
JUDGEMENT/ORDER uploaded on	28/11/2022

