



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**
ANTICIPATORY BAIL APPLICATION NO. 1847 OF 2022
IN
(C. R. No. 877 of 2022 MIDC Police Station, Mumbai)

Mohit Rakesh Gupta,

Age : 38 yrs., Occupation : Self employed,

R/o : Flat No. 3106, Tower A, Omkar Alta Monte,

Off. Western Express Highway, Malad E.

Mumbai 400 097

..Applicant

V/s

The State of Maharashtra

(through MIDC Police Station)

..Respondent

Ld. Adv. Prem Tanna h/f Adv. Shailendra Mishra for the applicant.

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

Ld. Adv. Mihir Gheewala, for the intervener.

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

DATE : 13th December, 2022

ORAL ORDER

This is the successive i.e. third application for anticipatory bail.

2 Earlier Anticipatory Bail Application No. 1356 of 2021 was moved by the applicant along with other applicants as being his

father, mother, wife, brother and others in which by an order dtd. 27/10/2021, my learned Predecessor had issued direction to the Police Station to issue notice of 72 hours in advance to the applicants before taking any coercive steps in the event any crime is registered against them on the complaint of M/s Pidilite Industries Limited.

3 Thereafter, second Anticipatory Bail Application No. 1474 of 2022 filed by the applicant under section 438 of the Code of Criminal Procedure came to be rejected by an order dtd. 27/09/2022.

4 The applicant thereafter, preferred Anticipatory Bail Application No. 2715 of 2022 in the Hon'ble Bombay High Court in which the Hon'ble High Court by an order dtd. 06/10/2022 disposed of the said application in view of an undertaking given by the applicant that he would appear before the Investigating Officer within a period of three days. It was directed by the Hon'ble High Court that pursuant to his attendance, the Investigating Officer shall carry out necessary investigation and in case, if he deems to effect applicant's arrest, he shall record the reasons in writing to that effect. If the Investigating Officer comes to a conclusion that custodial interrogation of the applicant is necessary, he shall give 72 hours notice in advance to the applicant.

5 By this application, the applicant again approached to this Court for pre-arrest protection.

6 Perused application and say of the prosecution. Complainant M/s Pidilite Industries Limited also filed intervener application and resisted the application to release the applicant by

granting anticipatory bail.

7 In the aforesaid background, I heard the submissions of the learned advocate for the applicant at length. I also heard the submissions of the learned advocate for the intervener, Investigating Officer and learned APP and also gone through the case diary.

During the course of arguments, learned advocate for the applicant placed reliance on -

Dilip Singh Vs State of Madhya Pradesh and Another [(2021) 2 SCC 779

Abhishek Vs State of Maharashtra, through City Police Station and Another [2022 SCC OnLine Bom 1407]

Sumedh Singh Saini Vs State of Punjab and Another [2020 SCC OnLine SC 986]

Satender Kumar Antil Vs Central Bureau of Investigation and Another [2022 SCC OnLine SC 825]

Bhadresh Bipinbhai Sheth Vs State of Gujarat and Anr. [(2016) 1 SCC 152

Public Service Commission and another Vs State of UP and others [2019 SCC OnLine ALL 4576 Allahabad High Court]

Om Parkash Sharma Vs CBI, Delhi [(2005) 5 SCC 679]

Sidharam Satlingappa Mhetre Vs State of Maharashtra and Others [(2011) 1 SCC 694]

Ankit Narang Vs State, Govt. of NCT Delhi [2022 SCC OnLine Del 734]

Ravindra Saxena Vs State of Rajasthan [(2010) 1 SCC 684]

Vinod Kumar Sharma Adn Another Vs State of Uttar Pradesh and another [2021 SCC OnLine SC 3225]

8 On the other hand, on behalf of the intervener reliance is placed on -

State of Orissa Vs Debendra Nath Padhi [(2005) 1 SCC 568]

Special Police Establishment Vs Umesh Tiwari and Ors. [MANU/MP/0121/2022] Hon'ble High Court of Madhya Pradesh (Jabalpur Bench)

Narendra Kumar Vs State of Haryana [2018 SCC OnLine P & H 6861] Hon'ble Punjab and Haryana High Court at Chandigarh

M/s V.L.S. Finance Ltd. Vs S.P. Gupta and Anr. [AIR 2016 SC 721]

9 On behalf of learned APP, reliance is placed on **G.R. Ananda Babu Vs The State of Tamil Nadu and Anr. Criminal Appeal No. of 2021 (arising out of SLP (CrI.) No. 213 of 2021 dtd. 28/01/2021.**

10 Before proceeding to analyze the facts and circumstances in deciding this application, it is necessary to mention that the applicant has also moved an application Exh. 06 under section 91 of the Code of Criminal Procedure for directing the Investigating Officer to produce the Audit Report of Ernst & Young who has carried out Forensic Audit after the internal audit was performed in M/s Peditlite Industries Limited on the ground that the prosecution is trying to cover blunder of the complainant pertaining to the transactions of purchasing masks by the company.

11 In the aforesaid background, I have extensively heard the submissions of respective parties and also carefully gone through the ratio and guidelines laid down in case laws cited supra in the light of the facts and circumstances pertaining to this crime. Indisputedly, the applicant was serving as Head Purchaser in Pidilite Industries Limited and he used to have interaction and co-ordination with the employees of the company while procuring the raw material. The applicant was engaged in fixing the rates, finalizing the terms and payment, etc. The company used to purchase raw materials from several companies including Kranath Kreations and KAS plastics, etc. As can be seen from the case diary, during the period Covid-19 pandemic, M/s Pidilite Industries Limited had dealing with Kranath Kreations owned by Mr. Jigar Parekh for purchasing non-woven (3 Ply) masks. The complainant company i.e. M/s Pidilite Industries Limited had also dealing with KAS Plastics for purchasing the packing materials. It also reveals that IN27 Corporation is a subsidiary company of Kranath Kreations. On the basis of Forensic Audit, the complainant company transpired that the complainant was though aware that the rate of non-woven (3 Ply) masks were having rate of Rs. 15.50 per mask and there was a Government Circular that price of the mask should not be more than Rs. 16/-, the applicant entered into a contract with Kranath Kreations by purchasing 19,50,000 masks at the rate of Rs. 16.65/- per mask i.e. total of Rs. 3,24,67,500/-. The case of the prosecution is that the subsidiary company of Kranath Kreations i.e. IN27 Corporation has transferred Rs. 33,00,000/- in the accounts of mother and father of the applicant in consideration of the aforesaid transaction by way of commission.

12 Further, it reveals that M/s Divy Plastics is a subsidiary company of KAS Plastic and in consideration of the transaction of purchasing of packing materials from the KAS plastics, its subsidiary company has transferred money in the account of the wife of the applicant every month by way of commission and total amount alleged to be transferred in the said account is Rs. 15,11,900/-.

13 On the basis of extracts of the bank accounts collected by the Investigating Agency, it has been transpired that the amount has been transferred in the account of mother, father and brother of the applicant from the account of IN27 Corporation. This fact is supposed to have been disclosed by the owner of one of the aforesaid companies that the said amount was transferred in their account at the instance of the applicant. Though, the applicant has produced copies of agreement, index, Leave and Licence and bank statements etc. to show that the alleged transaction in the account of his family members are not having concerned with the affairs of the complainant company, considering the proximity of these transactions pertaining to the account of wife, mother, father and brother of the applicant, at this juncture, documents filed by the applicant cannot be accepted blindly unless duly interrogated by the Investigating Agency. Since the applicant was dealing with these companies and the fact of the alleged association of his wife and other family members as being partners or employees never been disclosed by the applicant prior to lodging the complaint by the complainant company.

14 The applicant has also filed an application Exh. 06 under section 91 of the Code of Criminal Procedure for directing the

Investigating Officer to produce Audit Report of Ernst & Young in Court. In this context, I have carefully gone through the ratio laid down in the case laws cited supra relied upon from either sides. In the case of **Special Police Establishment (supra)**, the Hon'ble Madhya Pradesh (Jabalpur Bench) High Court has specifically observed that the invocation of **Section 91** during investigation remains open for the Court, the Police or the victim whereas the accused can invoke **Section 91** on and after filing the charge-sheet from which stage the proceedings become multilateral bringing to the fore the other stakeholders i.e. the victim and the accused also, besides the prosecution. In para 8, it is specifically observed that in view of above discussion, what comes out loud and clear is that by the impugned order the trial Court permitted the respondent accused to invoke **Section 91** during pendency of the investigation which as per the discussion above is impermissible since the process of investigation is unilateral and out of bounds for the accused.

Considering these circumstances, the application Exh. 06 filed by the applicant under section 91 of the Code of Criminal Procedure is devoid of substance.

15 After considering the entire facts and circumstances including the quantum of amount involved in this crime, it is necessary to elicit material information which can only be done by way of custodial interrogation of the applicant. This being sensitive aspect to be interrogated from the applicant by the Investigating Agency. Having regard to the aforesaid circumstances, the applicant appears to be prima-facie involved in misappropriating such a huge amount by committing fraud and by hatching conspiracy at large scale in well planned manner while dealing with the vendors of the

aforesaid company. Therefore, custodial interrogation of the applicant will certainly be required. The offence is grave, serious and socio-economic in nature. There is no change in the circumstances. Thus, considering all these circumstances, in my view, no prima-facie case is made out by the applicant for extending the protection of pre-arrest bail by exercising discretion in his favour. In this view of the matter, following order is passed :

ORDER

- 1) Anticipatory Bail Application No. 1847 of 2022 is hereby rejected and disposed of accordingly.
- 2) The concerned Police Station be informed accordingly.

sd/-

(R.M. MISHRA)

Dt. 13/12/2022

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 13/12/2022
Transcribed on : 13 and 14/12/2022
Checked on : 14/12/2022
Signed on : 14/12/2022

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

14/12/2022 at 5.45 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	13/12/2022
JUDGEMENT/ORDER signed by P.O. on	14/12/2022
JUDGEMENT/ORDER uploaded on	14/12/2022

