

IN THE COURT OF SESSION FOR GR. BOMBAY AT MUMBAI

ANTICIPATORY BAIL APPLICATION NO.2769 OF 2022

Santosh Haushiram Shinde
Age : 45 year, Occ : Driver,
R/o : Flat No.B/202, Soor Malhar, Plot No.43,
Sector 36, Kamothe, Panvel Mahanagarpalika,
Raigarh – 410209. ... **Applicant**

Versus

The State of Maharashtra
(At the instance of Police Station,
M.R.A. Marg) ... **Respondent**

Appearance:

Mr. Shubham Sandeep Bane, Ld. Adv. for applicant -
Mrs. Kavita Bagal, Ld. Addl. P.P.

CORAM : HIS HONOUR ADDL.SESIONS
JUDGE M. G. DESHPANDE
(C.R.No.16)

DATED : December 20, 2022

ORDER

1. This is an application by Santosh Haushiram Shinde for granting anticipatory bail under Section 438 Cr.P.C. apprehending arrest for the crime which is within his special knowledge and not yet recorded by way of FIR. P.I. (Crime), M.R.A. Marg Police Station filed say (Exh.3) referring the background in which the application is made and submitted that till date there is no complain-application filed either by CMS Securities Employees Co-op. Credit Society Ltd or Mumbai District Central Bank Ltd or any other person/society claiming himself to be aggrieved of the alleged act of the applicant. With this, it is contended to reject the application.

2. Heard Ld. Adv. Mr. Subham Bane for the applicant and Ld. Adv. Mrs. Kavita Bagal. Following points arise for my

determination. I am recording following findings thereon for the reasons discussed below :-

POINTS	FINDINGS
1. Whether the applicant has made out a strong prima-facie case to grant protection under Section 438 of Cr.P.C. ?	No.
2. What Order ?	Application stands rejected.

REASONS

POINT NO.1.

FACTS ALLEGED IN THE APPLICATION

3. The applicant was employee of CMS Securities Ltd. Its Union had filed proceeding before the Hon'ble High Court against the company for closing down Mumbai Unit, which is pending. The employees of CMS securities Ltd. formed Co-op. Credit Society. The applicant was elected as committee member of the society and since formation, he was the Honorary Secretary of the society till June,2022. Due to Covid-19 and closure of the company unit, the applicant had withdrawn cash for day-to-day administration, but could not submit the vouchers therefor. Hence, there is difference of Rs.23,60,000/- found in the account of the society.

4. The applicant being Secretary, sanctioned loan to himself and three employees amounting to Rs.31,10,175/-, which was unpaid. Therefore, other committee members forced the applicant to take liability of whole Rs.53,84,881/- and resign the post. Accordingly, in Jun, 2022 applicant had accepted liability of Rs.53,84,881/- and given undertaking dt.09.07.2022 thereof. But the applicant failed to repay the said liability wholly, but could deposit only Rs.5,00,000/- on

29.11.2022. In this background, now the applicant is apprehending his arrest if society lodges FIR due to his non-payment of the said liability and as per undertaking dt.09.07.2022 given in that regard.

5. Admittedly, no FIR has been registered till date. Even the police officer within whose jurisdiction the applicant is apprehending arrest, has clearly submitted in the say that, complain application was also not received from anyone with allegations as such as mentioned in the facts. The say of Police Officer itself indicates that he is not intending to effect any arrest of the applicant. Law is settled that, mere apprehension of arrest is sufficient to invoke power under Sec.438 Cr.P.C. However, in the instant case there is nothing to reflect any apprehension as such for an action at the behest of police authority concerned. At the cost of repetition neither there is any complain application nor FIR for the allegations/facts made in this application. Therefore, at the moment there is no apprehension of arrest of the applicant to qualify the application under Sec.438 Cr.P.C. Hence, I am of the opinion this is not a fit case to grant protection under Sec.438 Cr.P.C. If the FIR is registered then the applicant can make such application. But at the moment there is no apprehension of arrest. Hence, I am of the opinion there is absolutely no strong prima-facie case made out by the applicant to grant anticipatory bail. With this, Point No.1 is answered in the negative and following order is passed :-

ORDER

A.B.A.No.2769 of 2022 stands rejected.



Dt.: 20.12.2022

Signed on

: 20.12.2022

(M.G. Deshpande)

Addl. Sessions Judge.

C.R.No.16, Gr.Bombay at Mumbai

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

**22.12.2022 at hours
UPLOAD DATE AND TIME**

**(KISHOR PRAKASH SHERWADE)
NAME OF STENOGRAPHER**

Name of the Judge

**HHJ M. G. DESHPANDE
(COURT ROOM NO.16)**

**Date of pronouncement of
judgment/order**

20.12.2022

Judgment/order signed by P.O. on

20.12.2022

Judgment/order uploaded on

22.12.2022