

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1334 OF 2016

Rohidas Baburao Botre. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. S.H. Nimbalkar, advocate for Applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 22, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 388 of of 2016 registered at Pimpri Khakurdi Police Station for the offence punishable under Section 406, 420 read with section 34 of the Indian Penal Code.

3 The learned Counsel for the applicant submits that the son of present applicant namely, Abijit Botre was enlarged on bail by the learned Magistrate under section 437 of the Code of Criminal Procedure, 1973.

4 It appears that the applicant happens to be a entrepreneur with private work shop. It is specifically contended that overt acts are attributed to the son of the present applicant. The allegation against the co-accused and the present applicant are para materia the same. It appears from the impugned order that the present applicant had assured the informant that his work would be done. It also appears that the consideration was paid in favour of the son of the present applicant. However, the order also shows that there is specific allegation that the amount of Rs. 10 Lakhs was in fact, handed over to the applicant and thereafter, the assurance was given. The criminal proceedings cannot be a recovery proceedings.

5 However, in all fairness, the learned Counsel for the applicant submits that the role of the present applicant needs to be considered.

6 This Court on considering the nature of allegations is of the opinion that the relief under Section 438 of the Code of Criminal Procedure, 1973 would not be appropriate. However, the applicant cannot be denied of the relief under Section 437 of the Code of Criminal Procedure, 1973. The applicant shall appear before the concerned Magistrate on 1st September, 2016. The learned Magistrate shall consider the application of the applicant without being influenced by the observations made by the Additional Sessions Judge, Pune or disposal of this application and shall consider the prayer under Section 437 of the Code of Criminal Procedure, 1973 as custodial interrogation may not be imperative. The learned Magistrate shall dispose of the application on the same day. The applicant is protected till 5 p.m. of 1st September, 2016.

7 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)