

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1532 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Me. Subhash Jha i/by Law Global for the Applicant.
Ms. Rutuja Ambekar, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 31st August, 2016

P.C.

The applicant is apprehending arrest in CR NO.208/2014 dated 3.11.2014 registered with BKC Police Station, Mumbai under Section 363 of the Indian Penal Code.

2) The first information report is lodged by Smt. Zaibunisa Shaikh inter alia mentioning that her grand sons namely Mohd,. Abdulla aged about 6 years and Mohd. Hamja aged about 3 years were abducted from her lawful guardianship by the applicant. It is to be noted here that the applicant is the biological father of the said two minor sons namely Mohd. Abdulla and Mohd. Hamja. The record reveals that the first informant Smt. Zaibunisa Shaikh Ahmed Shaikh had filed Cri. W.P. No.4251/2014 under Article 226 of the Constitution of India seeking writ of

habeas corpus for restoring the custody of the said minor children. The Division Bench of this Court disposed off the said petition by its Judgment dated 8.1.2016. In (Para-8) of the said Judgment the Division Bench has observed as under.

“(8) At this stage, it needs to be noted that we have spent nearly about two hours in convincing the parties to settle the matter amicably. Suggestion was made keeping in mind the welfare of the children as paramount consideration. Unfortunately, parties are not willing to settle the matter amicably.”

3) The record further discloses that the police have filed their reply dated 29.8.2016 to the application filed by the applicant for pre-arrest bail before the trial Court wherein it is stated that the custody of the applicant is not necessary for the purpose of investigation and the police have already submitted the charge sheet without arresting the applicant.

4) Without going into the merits of the said case it will not be out of way to observe here that, prima facie it is very difficult to accept the contention of the prosecution that an offence under Section 363 of the Indian Penal Code is at all made out. Be that as it may, in view of the statement made by the Investigating Officer in its report dated 29.8.2016 the present application deserves to be allowed.

5) Hence, the following order.

- a) In the event of arrest of the applicant in CR NO.208/2014 registered with BKC Police Station, Bandra, Mumbai, he shall be released on his furnishing PR bond of Rs.10,000/- with one or more sureties in the like amount.
- b) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)