

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

ANTICIPATORY BAIL APPLICATION NO. 1961 OF 2016

Mr. Vaibhav Manoj Shah

... Applicant

vs.

The State of Maharashtra and anr.

... Respondents

Mr. Subhash Jha i/by Subhash Hulyalkar, for the applicant.
Mr. R. K. Phatak, Special P.P. a/w Mrs. J. S. Lohokare, A.P.P. for
the State/State.

Coram : N. W. SAMBRE, J.

Date : 23rd November, 2016

P.C. :

1. Not on board. Mentioned. With consent of A.P.P. taken on board at the instance of the applicant.

2. Heard Mr. Jha, the learned counsel for the applicant. Applicant is seeking ad-interim protection pursuant to the provisions of Section 438 of Criminal Procedure Code in the Enquiry No. F. No. DRI/MZU/B/INT-100/2016 carried out by the non-applicant. It is the case of the applicant that he having purchased gold from the Indian Market, which can be justified based on the documentary receipts of which he is in possession of. According to him, he having approached the learned Sessions Judge with a proper application for grant of ad-interim protection

based on above referred receipt under Section 438 of Cr. P. C, the Court has failed to exercise the jurisdiction. He would also submit that once based on the documentary evidence if prima facie it is demonstrated that the applicant has purchased gold from Indian Market, the provisions of Customs Act are not attracted. Based upon certain orders passed by this Court granting ad-interim protection in somewhat similar situation, he prays that the applicant is also entitled for the similar relief from this Court till the disposal of application of the applicant by the Sessions Court.

3. I have perused the record before me along with prayer of the applicant. The accused namely Anand Dubey and Buddu Gupta were arrested in the above referred crime, from whom the gold, which is from the foreign country, in the form of bar and biscuit, were seized. During investigation it revealed that the certain more such gold was found to be stored at Nirvi Impex of which the applicant is either proprietor/owner. As such the authority has sealed the said premises also.

4. Though the statement of the co-accused is not required to rely upon, however, for the purpose of investigation, it is always open for the investigating agency to follow the line given by other accused for carrying out further investigation.

5. From the material available on record, there appears to

be prima facie involvement of the applicant. As such the prayer as made stands rejected.

6. The learned Sessions Judge shall decide the application of the applicant without being influenced by the findings recorded herein above. The application is rejected.

[N. W. SAMBRE, J.]