

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 358 OF 2017

Deedar Hussain Chaudhary
S/o Mohammed Umer Choudhary

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Moinuddin Khan Advocate for the Applicant.
Ms. Veera Shinde APP for the State.
Mr. P. I. Chandekar, PI, Mankhurd Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 1st MARCH, 2017.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 20 of 2017 registered at Mankhurd police station on 16/01/2017 for offence punishable under sections 285, 336, 337 and 114 of the Indian Penal Code.

2) The learned counsel for the applicant submits that for the offences stated in the F.I.R., applicant had appeared before the Magistrate and was granted bail under section 437 of Code of Criminal Procedure, 1973 as the

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offences alleged against the applicant were bailable offences.

3) In the course of investigation, it was revealed that the applicant has committed an offence under section 436 of the Indian Penal Code. The learned Metropolitan Magistrate while granting bail had imposed certain conditions on the applicant. It was revealed that applicant had illegally stored oil without taking requisite precautions. In the course of melting the oil, there was a fire and 21 shops and godowns were destroyed in the said fire. It appears that investigating agency has added section 436 of the Indian Penal Code.

4) On 25/01/2017, an application was filed by the prosecution seeking cancellation of bail and the investigating agency had also sought custody of the applicant for further investigation. Notice was issued to the applicant. Applicant failed to appear before the learned Magistrate and finally on 02/02/2017, bail bonds submitted by the applicant were forfeited and non-bailable warrant was issued against the present applicant.

5) Learned counsel for the applicant submits that in fact, section 436 of the Indian Penal Code was added subsequently and he is seeking pre-arrest bail only to the extent of section 436 of the Indian Penal Code. The submission that no police custody can be asked for further 15 days is unwarranted and unfounded as the applicant was not in custody on the date when investigating agency had asked for custody. Moreover, non-bailable warrant was issued against the applicant. Once a standing non-bailable warrant is issued, an application under section 438 of the Code of Criminal Procedure, 1973 would not be maintainable.

6) In view of this, applicant does not deserve to be granted pre-arrest bail. Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)