

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

**ANTICIPATORY BAIL APPLICATION NO.1633 OF 2021**

Rishi Chintamani Mali ..... Applicant  
Versus  
The State of Maharashtra ..... Respondent

Mr. S.V. Marwadi, Advocate i/b. Karansingh Rajput, for the Applicant.

Mr. Sanjeev Singh, Advocate for the Intervenor.

Smt. M.R. Tidke, APP for the Respondent-State.

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**CORAM : SARANG V. KOTWAL, J.**  
**DATE : 16<sup>th</sup> JULY, 2021**  
**[Through Video Conferencing]**

**P.C. :**

1. The Applicant is seeking anticipatory bail in connection with C.R.No.799/2021 registered at Borivali Police Station, on 13.6.2021 under Section 448 read with 34 of the Indian Penal Code.

2. Heard Shri S.V. Marwadi, learned counsel for the applicant, Shri Sanjeev Singh, learned counsel for the Intervenor and Smt. M.R. Tidke, learned APP for the State.

3. The FIR, in this case, is lodged by one Raj Salian

on 13.6.2021. According to him he has taken a premises on rent from one Chintan Mali, who is father of the present applicant. The premises is at Kora Kendra Ground, Sumer Nagar, Mumbai-92. According to the first informant, the rent agreement was between the period 1.4.2019 to 31.3.2024. The informant claims to have been making monthly payments to the owner. The informant is conducting hotel by name "Heritage Kitchen & Banquette". But because of spread of COVID-19 Pandemic, his hotel was closed since past two years before lodging of the FIR.

4. On 12.6.2021, the informant had opened his hotel. His employees were doing the cleaning work. He had kept his important documents and his mobile phone in the hotel. At around 9:00 p.m. keeping all these articles in the hotel, he had gone out. At about 11:00 p.m., about seven people entered his hotel. At that time the informant's Manager Ravi Devadika was present there. He asked those persons to leave. It is alleged that one of those unknown persons told him that they were sent by the present applicant. That person told the

informant's Manager and others to go away from the premises. It is his case that the Manager Ravi Devadika and his other employees Rajesh Sharma, Shahabuddin and Manoj were thrown out. But two other employees Amar Bahaddar and Dinesh Salvi stayed put in those premises. Ravi Devadika telephonically informed this incident to the informant. He went there. The informant saw that the shutter was closed and those people were still present inside. The informant thereafter approached the police station and lodged his FIR.

5. Shri Marwadi, learned counsel for the applicant submitted that the applicant is the owner of the premises. The FIR is absolutely false. The possession was and is with the applicant. Shri Marwadi relied on the plaint in Regular Civil Suit filed by the applicant against one Rohan Nandkumar Sawant. According to Shri Marwadi this Rohan Sawant was trying to induct the present informant in those premises.

6. Shri Marwadi relied on the order dated 26.10.2020 passed in the aforementioned Regular Civil Suit No.0201069/2020. By that order, the Court had granted ad-

interim relief regarding the possession in favour of the present applicant. He, therefore, submitted that in any case the offence as lodged in the FIR against the applicant is not made out.

7. Learned counsel for the informant submitted that the suit referred to by Shri Marwadi was a collusive suit and, therefore, the defendant Rohan Sawant had not really opposed grant of ad-interim relief. It is submitted that there is a dispute between father of the applicant and the applicant himself interse. He submitted that the applicant's father has the right to ownership of the premises and he had given this premises on rent to the informant. He further submitted that the applicant does not have anything to show that he was running a business of hotel in those particular premises. He further submitted that the informant's articles are still lying in the premises.

8. Learned APP relied on the complaint given by the applicant's father to the police on 20.6.2021 in which the applicant's father had made certain allegations against the

applicant himself.

9. I have considered all these submissions. The incident mentioned in the FIR is dated 13.6.2021, and after that more than a month has passed. I do not see any purpose for which the applicant's custodial interrogation in this particular case is necessary.

10. There is scope to believe that it appears to be a civil dispute between various parties rather than the criminal offence. The right to possession and factum of possession can truly be decided by the Civil Court in appropriate proceedings. For that purpose, the applicant has already approached the Civil Court and has obtained an ad-interim relief of possession of that particular premises. That order was passed on 26.10.2020 i.e. much before the FIR dated 13.6.2021. At this stage it would not be proper to observe anything in respect of rights of the parties or the possession of the parties in respect of those premises either previous to the incident, on the date of the incident or after the incident. This would remain matter of investigation or matter before the appropriate Civil Court.

However, at this stage, custodial interrogation of the applicant is not going to yield anything further. As of today, those persons who had entered into those premises are obviously not in the premises. If there are articles in the premises, the police will take appropriate steps to protect those articles and hand over them to their rightful owners. In this view of the matter, I am inclined to protect the applicant by way of anticipatory bail. Hence, the following order :

**ORDER**

- (i) In the event of his arrest in connection with C.R.No.799/2021 registered with Borivali Police Station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend concerned police station as and when called and shall cooperate with the investigation.
- (iii) Anticipatory Bail Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**

Deshmane (PS)