

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

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO.790 OF 2022**

Vijay Shankar Gaikwad & Anr. ...Applicants

Vs.

The State of Maharashtra ... Respondent

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Mr.R.V. Pai, Senior Advocate a/w Mr.Akshay R. Patil and  
Mr.Amogh Khedye for the Applicants.

Mr.N.B. Patil, APP for the Respondent-State.

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**CORAM : C.V. BHADANG, J.**

**DATE : 25 MARCH 2022**

**P.C.**

. The Applicants, apprehending arrest, in connection with the investigation of Crime No.21 of 2022 registered with Sangvi Police Station, under Section 420 read with Section 34 of Indian Penal Code is seeking anticipatory bail.

2. I have heard learned counsel for the parties.

3. It is submitted by Mr.Pai, the learned Senior Counsel for the Applicants, that the only offence registered against the Applicants is 420 of IPC which is punishable to the extent of imprisonment of 7 years.

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4. Reliance is placed on the decision of the Supreme Court in case of *Arnesh Kumar V/s. State of Bihar*<sup>1</sup>, in order to submit that the Investigating Officer in such a case is obliged to issue a notice under Section 41 A of Cr.P.C. which is not done.

5. The learned Additional Public Prosecutor, has submitted that the complainant would be a necessary party, inasmuch as the FIR in this case is registered on the basis of a direction under Section 156(3) of Cr.P.C., at the instance of the original complainant.

6. Upon hearing the learned counsel for the parties, I find that this Application can be disposed of on a short count. It is not necessary at this stage to dwell on the issue of the complainant being arrayed as a party respondent, inasmuch as, no adverse order is being passed.

7. The Application is accordingly disposed of. It will be open to the Investigating Officer to issue a notice under Section 41 A of Cr.P.C. to the Applicants of clear three working days, in the event the Investigating Officer intends to effect an arrest. On receipt of such a notice, if any, leave granted to the Applicants to renew the request for anticipatory bail.

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1 (2014) 8 SCC 273

8. The issue about the necessity of the complainant as a party respondent is left open.
9. The learned Additional Public Prosecutor undertakes to communicate this order to the Investigating Officer.

**C.V. BHADANG, J.**