

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

ANTICIPATORY BAIL APPLICATION NO. 791 OF 2023

Kirtikumar Mangaldas Shah

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Mustafa Najmi , Mr. Dilip Shukla a/w. Mr. Hasanuddin S. Ansari
for the Applicant.

Mr. Ghanshyam Upadhyay i/b. Law Juris for the Intervenor-Respondent
No.2.

Mr. S.V.Gavand , APP for the State.

Mr. Ravindra Medge from Kurar Police Stn. Present.

CORAM : ANUJA PRABHUDESSAI ,J.

DATED : 23rd MARCH, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No.868 of 2022 registered with Kurar Police Station, Mumbai for offences under Section 420, 465, 468, 469, 471 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant, learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The case of the prosecution in brief is that the Applicant herein

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had dispatched one forged letter to Naresh Patel, who a star witness in crime No. 444 of 2014 registered at Kandivali Police Station. The said letter was issued in the name of the learned Judge, Dindoshi Court, Borivali Division, Mumbai, alleging that said Naresh Patel was involved in several illegalities and that he was a member of Al-Qaida, and associated with other similar organizations. He was asked several questions as to whether he knew Deepak Patel, the husband of the first informant in Crime No.444 of 2014, and other details such as whether he was involved in any business in the USA, whether he was contacted by Dr. Shah, whether he has sent any money to India etc. The complainant has alleged that the said letter was handed over to him some time in September 2014. The complainant suspects that the said letter was sent by the Applicant herein. The Complainant therefore claims that the said letter was forged by the Applicant herein. It is on the basis of these allegations the aforesaid crime came to be registered.

4. It is pertinent to note that the previous crime being Crime No. 444 of 2014 was registered on 18.12.2014, wherein the first informant Dr. Jyotsna had alleged that the Applicant herein had agreed to sell to her and her husband a nursing home for Rs.2,44,00,000/-. It was alleged that despite receipt of the sale consideration of Rs.2,44,00,000/- the Application failed to transfer the hospital in the name of the first informant and her husband. Further allegations were made that the

Applicant had also refused to refund the amount received by him towards the sale consideration. It is stated that the said case has been investigated and the chargesheet has already been filed, which is registered as RCC No.2152 of 2014, pending on the file of City Civil & Session Court, Dindoshi. It is stated that Naresh Patel is one of the witnesses in the said case.

5. The first informant has filed second FIR on 13.02.2022 alleging that in September 2014 i.e. much before registration of the said FIR, said Naresh Patel had handed over to her copy of the said letter. It is alleged to have been forged by the Applicant herein. Prima facie, no reasons are spelt out for not bringing the said letter to the notice of the Investigating Officer who was investigating Crime No. 444 of 2014. Furthermore, apart from suspicion and apprehension of the complainant, there is no prima facie material to show that the Applicant was involved in forging the said letter. This fact situation is confirmed by the learned APP for the State. The FIR as well as other records do not indicate that the Applicant herein is involved in commission of any offence as alleged in the subsequent FIR. Moreover, the Applicant has already reported to the Investigating Officer and has co-operated with the investigation.

6. Learned Counsel Mr. Upadhyay for the Respondent No.2 submits that the Applicant has several criminal antecedents of similar nature.

Suffice it to say that, in the absence of material to show the involvement of the Applicant in commission of crime, he cannot be declined bail solely on the ground of criminal antecedents.

7. Having considered the submissions advanced by the learned Counsel for the respective parties, and the material on record, in my considered view, no case is made out for custodial interrogation. Consequently, it is a fit case for exercise of discretion under Section 438 of Cr.P.C. Under the circumstances, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.868 of 2022 registered with Kurar Police Station, the Applicant be released on bail on furnishing bail bond of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount, to the satisfaction of the Investigation Officer.

(ii) The Applicant shall report to the Investigating Officer as and when required by the Investigating Officer .

(iii) The Applicant shall keep the Investigating Officer informed of his current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

(iv) The Applicant shall not interfere with the Complainant and the other witnesses, or tamper with the evidence in any manner.

(ANUJA PRABHUDESSAI, J.)