

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

ANTICIPATORY BAIL APPLICATION NO. 1697 OF 2023

Khimsingh Venji Rajpurohit

...Applicant

vs.

State of Maharashtra

...Respondent

**ALONG WITH
INTERIM APPLICATION NO. 2227 OF 2023**

Sunil Hardasmal Tharwani

...Intervenor

In the matter of

Khimsingh Venji Rajpurohit

...Applicant

vs.

State of Maharashtra

...Respondent

Mr.Hitesh Phulwani – Advocate for Applicant.

Mr.S.R.Agarkar – APP for Respondent-State.

Mr.Sushant Sham Varak – PSI – Badlapur East Police Station.

CORAM : S. M. MODAK, J.

DATED : 22ND JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned Advocate for the First-Informant. Also heard learned APP.

2. This Interim Application No. 2227 of 2023 filed by the First-Informant is granted. He is at liberty to intervene in this proceeding.

Satish Sangar

Accordingly, it is disposed of. Investigating Officer is present.

3. When the Court of Additional Sessions Judge – Kalyan rejected the anticipatory bail application filed by this Applicant, FIR was not registered but merely on the basis of an apprehension of arrest, Applicant on the basis of a letter dated 14th April, 2023 (Page No.11) (asking the Applicant to remain present in the Police Station), the said Application was filed. It was rejected for the reason that there is no apprehension and the conviction of this Applicant for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 [“NI Act”] was not brought to the notice of the Sessions Court.

4. During pendency of this Application, the Police have registered the FIR bearing C.R. No. 154 of 2023 under Section 420 read with 34 of Indian Penal Code, 1860 [“IPC”]. Learned APP submitted that in view of this development, let the Applicant be relegated to the Court of Session. Even learned Advocate for the First-Informant reiterated the same submission.

5. It is true that for the offence under Section 420 of IPC, the provisions of Section 41-A of the Code of Criminal Procedure, 1973 [“Cr.PC.”] will come into play and the observations by Hon’ble Supreme Court in case of *Arnesh Kumar V/s. State of Bihar and Satish Sangar*

Another¹ will be applicable. The Police have to issue a notice to the Applicant. My attention is invited to the general diary entry dated 21st June, 2023 by learned APP. It mentions that Police have visited the address at Satyam Shivam Sundaram Apartment at Badlapur but the Applicant was not found and in fact, he has sold those premises. It is contended that in view of that the notice under Section 41-A of Cr.PC., could not be served. That general diary entry does not make mention of Section 41-A notice. So, let fresh 41-A notice be given.

6. Learned Advocate for the Applicant reiterates that address given in the title clause as “Flat No.101, ‘O’ Wing, Mohan Palm, Badlapur (E) is correct address.

7. In view of that, following order is passed :-

O R D E R

- (i) Let the Police to give Section 41-A notice to the Applicant on the address mentioned in the title clause.
- (ii) Let the Police also to record the satisfaction that arrest of the Applicant is required.
- (iii) Applicant is directed to give his cell number and e-mail i.d., to the Police by sending a letter within 7 days from today.

8. In view of these observations, the Applicant is at liberty to

¹ (2014) 8 SCC 273

move the Court of Additional Sessions Judge – Kalyan.

9. Application is disposed of in the aforesaid terms.
10. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]