

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

ANTICIPATORY BAIL APPLICATION NO.1848 OF 2023

Shakir Mukhtar Mirza

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Aniket Ujjwal Nikam with Mr. Indrapal Singh for the Applicant.
Mr. S.V. Gavand, APP for the Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 4th AUGUST, 2023.

P. C. :-

1. This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in Crime No.121 of 2021 registered with Oshiwara Police Station, Mumbai, for the offences punishable under Sections 406, 417, 420, 468, 471 and 474 of the IPC.

2. Heard Mr. Aniket Ujjwal, learned counsel for the Applicant and Mr. S.V. Gavand, APP for the Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Daulat Kadar Khan. A perusal of the FIR prima facie reveals that the First Informant wanted either to purchase or to take on Leave and License basis one hall by name 'Jalsa and Jashna AC Hall' at Sahara Industrial Estate. It is stated that the First Informant had discussion with the Applicant herein and his son-Akhil Shakir Mirza and finally agreed to take the said hall on Leave and License basis. The First Informant executed a Leave and License agreement pursuant to which he paid an amount of Rs.1 Crore and agreed to pay the balance amount and rent of Rs.2,00,000/- per month. It is stated that the Applicant and his son had agreed to handover possession of the hall after expiry of the lease agreement with the previous lessee. The First Informant has alleged that the Applicant did not hand over the possession of the hall nor returned the money. Hence, the FIR.

4. The records reveal that son of the Applicant, who is a co-accused in this crime had issued cheques for refund of money, which were dishonoured. The First Informant had initiated proceedings under Section 138 of the Negotiable Instrument Act, against the son of the Applicant. In the complaint under Section 138 of the NI Act, the First Informant had not made any allegations against this Applicant. It

is also stated that no money has been transferred into the account of the Applicant. The records reveal that the Leave and License agreement was between the First Informant and the son of the Applicant herein and the Applicant was not signatory to the said agreement. Hence, apart from the mere statement that he was present at the time of negotiations, there is no prima facie material on record to indicate the complicity of the Applicant in the aforestated crime.

5. Considering the above facts and circumstances, this is a fit case to exercise discretion under Section 438 of the Cr.P.C. Hence, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.121 of 2021 registered with Oshiwara Police Station, Mumbai, he shall be released on bail on executing PR bonds in the sum of Rs.30,000/- with one or two sureties to the like amount;

(ii) The Applicant shall report to the concerned Investigating Officer for a period of two days i.e. on 07/08/2023 and 08/08/2023 between

11.00 a.m. to 2.00 p.m. and shall co-operate with the investigation;

(iii) The Applicant shall not tamper with the prosecution evidence and or influence the witnesses in any manner;

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

6. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)