



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

**ANTICIPATORY BAIL APPLICATION NO.2056 OF 2023
WITH
INTERIM APPLICATION NO.2784 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2056 OF 2023**

Vivek Omprakash Chandel

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

...

Mr. Ishwarlal Aggarwal with Mr. Aditya Rai, Mr. Nitin Rai, Mr. Abhishek Deorukhkar with Ms Minal Thakur for the Applicant.

Mr. Sushil M. Gaglani i/b. Mr. Rohit Singh for the Intervenor.

Mr. S.H. Yadav, APP for Respondent No.1-State.

Mr. D.N. Chaudhari, API, Mahim Police Station, present.

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.462 of 2022 registered with Mahim Police Station, Mumbai (initially registered at Shivaji Park Police as crime No.540 of 2022), for the offences punishable under Sections 201, 427, 443, 445, 448 and 455 of the IPC.

2. The said crime was registered pursuant to the FIR dated

09/07/2022 lodged by one Mahendra Vora, who has been handling legal and technical matters of M/s. Jeevratna Medi Treat Pvt. Ltd. since last 15 years. M/s. Jeevratna Medi Treat owns a business center situated on the first floor of Yashwant Niwas, Dadar Mumbai. By agreement dated 29/10/2020 Jay Gala, the Director of M/s. Jeevratna Medi Treat permitted the Applicant, a trustee of Pagdandi Education Foundation, to use the cabins in the said business center for conducting computer classes. As per the terms and conditions of the agreement the Applicant was permitted to use the said cabins every day between 07.00a.m. to 10.00 p.m. on payment of service charges. The First Informant alleged that On 14/12/2021 he terminated the said service agreement for breach of the terms and conditions and posted security guards to prevent the Applicant and others from entering the premises.

3. On 22/07/2022 the security guards prevented some members of Pagdandi Education Trust from entering the premises, in view of which the Applicant herein lodged a report against the security guards for offence under Section 341 of the IPC. The grievance of the First Informant is that on 09/07/2022 the Applicant broke open the lock and criminally trespassed into the premises. It is further alleged that the Applicant caused damage to the CCTV camera and DVR with

an intention of causing disappearance of evidence.

4. It is pertinent to note that initially Crime No.540 of 2022 was registered before Shivaji Park Police station for offences under Section 427, 448 and 201 of the IPC, which are bailable. It was only after the investigation was transferred to Mahim Police Station that non bailable sections viz. Sections 453 and 455 of the IPC came to be added. These sections relate to lurking house trespass, which as defined under Section 443 means committing house-trespass after having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass.

5. Thus, in order to prove the offence of lurking house trespass it has to be established that there was a house trespass and further that the person, who had committed house trespass had taken precaution to conceal such house trespass. In the instant case, neither the FIR nor the supplementary statement indicate that the Applicant had taken precaution to conceal the alleged house trespass. Hence, prima facie offence of lurking house trespass under Section 443 of the IPC is not made out and consequently offences under Sections 453 and

455 of the IPC are not made out.

6. Considering the nature of accusations, by order dated 21/07/2023 this Court had granted interim protection to the Applicant. Learned APP states that pursuant to the said order the Applicant appeared before the Investigating Officer and that he has been interrogated. Hence, no case is made out for custodial interrogation.

7. Under the circumstances, the interim bail granted to the Applicant vide order dated 21/07/2023 stands confirmed.

8. The Applicant to appear before the Investigating Officer as and when required by the Investigating Officer for the purpose of investigation.

9. The application stands disposed of.

10. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)