

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

ANTICIPATORY BAIL APPLICATION NO. 2442 OF 2023

Vimal Ramlochan Jha	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 2452 OF 2023

Hemant Kumar Jagdish Chaudhary	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 2456 OF 2023

Sitaram Rambadan Chaudhary	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 2457 OF 2023

Mahavir Jamunaprasad Jha alias Mahavir Jamun Shah	...Applicant
Versus	
The State of Maharashtra	...Respondent

AND

Sunil Kumar Jha alias Sushilkumar Upendra Zha ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Murtaja Nazmi with Mr. K. K. Tiwari, for Applicants.

Mr. M. G. Patil, APP for State in ABA Nos.2442 OF 2023, 2457 OF 2023 and 2458 OF 2023.

Mr. R. M. Pethe, APP for State in ABA 2452 OF 2023.

CORAM:- N. J. JAMADAR, J.

DATED:- 31st AUGUST, 2023

ORDER:-

- 1) Heard the learned counsel for the applicants and the learned APP for the State.
- 2) These applications are for pre-arrest bail in connection with C.R. No. 238 of 1995, registered with Santacruz police station, for the offences punishable under Sections 143, 147, 149, 332, 337, 341 and 427 of Indian Penal Code, 1860 (“the Penal Code, 1860”).
- 3) It seems that the applicants were sent for trial in CR No. 238 of 1995. Though at this stage, the Court is not equipped to record with an element of certainty, it appears that the

applicants did not appear before the learned Magistrate. I am inclined to proceed on the premise that steps to secure presence of the applicants were taken by issuing processes and warrants. Eventually, the learned Magistrate passed an order dated 12th April, 2023, committed the case for trial to the Court of Session, on the premise that the main offence punishable under Section 332 of the Penal Code, 1860 is exclusively triable by the Court of Session.

4) As the Committal Order bears upon the exercise of discretion by this Court, it is extracted below.

“ The chargesheet is submitted against all accused before this Court by Sr. Inspector of police, Santacruz Police Station, Mumbai for the alleged offence mentioned above. Copy of chargesheet is already furnished to all accused.

The main offence punishable U/Sec. 332 of IPC alleged against the accused exclusively triable by the Hon'ble Court of Sessions. Hence, this case is committed to the Court of Sessions, Gr. Mumbai, u/Sec. 143, 147, 149, 332, 337, 341, 427 of IPC.

All accused after releasing on bail remained absent. May times warrant issued against all accused returned unserved. Hence, proclamation U/Sec. 82 of Cr. P. C. and attachment warrant U/Sec. 83 of Cr. P.C. issued against all accused. All accused were declared as Proclaimed Offender. All accused are remanded to judicial custody during and until the conclusion of the trial.”

5) By the Committal Order, the learned Magistrate seems to have issued proclamation against the applicants. The learned

Counsel for the applicants also tendered a certified copy of the proceedings before the learned Magistrate. It seems that on 12th April 2023 itself, a proclamation under Section 82 of Cr. P. C. and attachment warrant under Section 83 of Cr. P. C. were issued against the applicants.

6) The applicants claim to have initially approached the Court of Session. In paragraph Nos. xvi and xvii of the applications, the applicants have averred that the Court of Sessions declined to entertain the prayer for the release of the applicants on bail.

7) Apprehending their arrest the applicants have approached this Court.

8) Since proclamations have been issued against the applicants, ordinarily this Court would not have entertained the applications for pre-arrest bail. However, there is a pivotal issue as regards the applicability of the provisions contained in Section 332 of the Penal Code, 1860, as amended by the Maharashtra Act No.40 of 2018, in its application to the State of Maharashtra with effect from 7th June 2018. By the said amendment, the punishment prescribed for the offence punishable under Section 332 of the Penal Code, 1860 has been enhanced to five years from three years in the Central

enactment. First Schedule part – 1 appended to the Code of Criminal Procedure, 1973, also stood amended by the said Act No. 40 of 2018, and the said offence, now cognizable and the punishable with imprisonment for five years or fine or both in the State of Maharashtra, is made triable by the Court of Session.

9) It seems, the learned Magistrate was persuaded to commit the case to the Court of Session as the offence punishable under Section 332 of the Penal Code, 1860 is now triable by the Court of Sessions.

10) It is imperative to note that in view of the provisions contained in Article 20 (1) of the Constitution of India, no person can be sentenced to punishment greater than that which might have been inflicted under the law in force at the time of the commission of the offence. As the guarantee under Article 20 (1) is absolute, the applicants cannot be sentenced to imprisonment for more than three years as on the date of the commission of the alleged offence in the year 1995, the offence punishable under Section 332 entailed punishment of three years only.

11) The situation which thus obtains is that the correctness of the committal order, on the premise that the offence punishable under Section 332 of the Penal Code, 1860 is triable by the court

of Sessions, may itself be required to be examined. In this view of the matter. I am persuaded to consider the prayer for pre-arrest bail.

12) In the case of **Lavesh Vs. State (NCT of Delhi)**¹, the Supreme court enunciated that, normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. The Supreme Court observed, inter alia, as under:-

“.... 12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as ‘absconder’. Normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail....”

13) The aforesaid pronouncement was followed by the Supreme Court in the case of **State of Madhya Pradesh Vs. Pradeep Sharma**².

14) In a recent pronouncement in the case of **Vipan Kumar Dhir Vs. State of Punjab and Another**³ reiterating the principle in the case of **Lavesh** (supra), the Supreme Court observed that even if there is any procedural irregularity in declaring the

1 (2012) 8 SCC 730

2 (2014) 2 SCC 171

3 (2021) 15 SCC 518

accused as an absconder, that by itself can not be a justifiable ground to grant pre-arrest bail in a case of grave offence save where the High court on perusal of case diary and other material on record is, prima facie, satisfied that it is a case of false or over-exaggerated accusation.

15) Applying the aforesaid principles to the facts of the case at hand, in my considered view, since the applicability of the amended Section 332 of the Penal Code, 1860 as amended by the State of Maharashtra by Act No. 40 of 2018 itself is debatable and the learned Magistrate has issued the proclamation and attachment warrant simultaneous with the Committal Order, a case is made out to exercise the discretion.

16) Hence, I am persuaded to allow the applications and grant limited protection from arrest to the applicant.

17) Thus, the following order:-

ORDER

- I) The applications stand allowed.
- II) In the event of the arrest of the applicants in connection with C.R. No. 238 of 1995, registered with Santacruz police station, for the offences punishable under Sections 143, 147, 149, 332, 337, 341 and 427

of Indian Penal Code, 1860, the applicants be released on bail on executing a PR Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount.

III) The aforesaid order shall remain in operation of a period of four weeks. In the meanwhile, the applicants are at liberty to move the jurisdictional Court for appropriate reliefs.

VI) The applications stand disposed.

[N. J. JAMADAR, J.]