

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3046 OF 2022
WITH
INTERIM APPLICATION NO. 3861 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 3046 OF 2022**

Amit Durga Vishwakarma ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Satish Muley a/w. Mosin Naik , Zaki Shaikh for the Applicant.
Mr. Yashpal Thakur a/w. Aadil Parsumpuria for the Intervenor
Mr. S.V.Gavand, APP for the State.

**CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 28th 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.980 of 2022 registered with Amboli Police Station, for offences under Section 381 and 385 of the Indian Penal Code.

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

**PRASANNA P
SALGAONKAR**

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3. The aforesaid crime was registered pursuant to the FIR dated 12.9.2022 lodged by Suresh Hanumanprasad Agrawal, the Sales Manager of the Company- Kargwal Enterprises Pvt. Ltd. A perusal of the FIR prima facie reveals that the Complainant herein was the Sales Manager of M/s. Kargwal Enterprises Pvt. Ltd., wherein the Applicant was working as an Accountant. The Complainant had alleged that in September 2022 the Applicant had misappropriated an amount of Rs.10 Lakhs from the office of the said company. Hence crime was registered for offence under Section 381 of IPC. Subsequently, in statement under Section 161 Cr.P.C. the Complainant alleged that the Applicant had stolen total cash of Rs.30,46,933/-. The first informant also referred to the e-mail sent by the Applicant wherein he had stated that he had not committed any offence and that he has been implicated in a false case. The Applicant had also alleged that he was in possession of hawala papers, pen drive, pass word etc and that everyone else will have to go to jail along with him. On the basis of the said e-mail, offence under Section 385 came to be invoked.

4. It is to be noted that the facts narrated in the first information report as well as the statement dated 8.10.2022 do not prima facie disclose essential ingredients of extortion, much less, committing or attempting extortion by putting the first informant in fear of any injury. Hence, prima facie, offence under Section 385 IPC is not made out. As

regards offence under Section 381 IPC, the records indicate that this Court (Coram : M.S.Karnik, J.) by order dated 23rd November, 2022, had granted interim bail to the Applicant with directions to report to the Investigating Officer. Learned APP concedes that the Applicant had appeared before the Investigating Officer and that he has been interrogated.

5. Learned Counsel for the Intervenor states that the Applicant should be directed to deposit the money that he has stolen. Suffice it to say that, application for bail or pre-arrest bail cannot be equated with recovery proceeding and condition of depositing money cannot be imposed in bail proceedings.

6. Considering the above facts and circumstances, this would not be a fit case for custodial interrogation. Hence the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in Crime No.980 of 2022 registered with Amboli Police Station, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive 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.

. Anticipatory Bail Application stands disposed of.

. Interim Application stands disposed in view of disposal of the Anticipatory Bail Application.

(ANUJA PRABHUDESSAI, J.)