



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3090 OF 2023**

Dishant Anil Goenka	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Ashok M. Saraogi, for Applicant.
Mr. S.H.Yadav, APP for State.
Mr. Sunil Sonawane, PSI, Charkop Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 1 NOVEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with an apprehension of arrest in a complaint lodged by Shri Shrinivas Shinde with Charkop Police Station, pursuant to which a notice was issued to the applicant on 13 October 2023.
3. Learned Counsel for the Applicant submits that the applicant had initially approached the Court of Session and by an order dated 25 October 2023 in ABA No.1674 of 203, the learned Additional Sessions Judge rejected the application. The learned Additional Sessions Judge noted that till date FIR is not registered against the applicant and in view of the pronouncement of the Supreme Court in the case of

Vijaykumar Gopichand Ramchandani V/s. Amar Sadhuram Mulchandani & Ors.¹

¹ 2022 Livelaw (SC) 1010

the direction to the effect that 72 hours advance notice should be given to the accused before effecting arrest in the event of FIR registered in respect of a cognizable offence is manifestly incorrect in law.

4. It appears that the learned Additional Sessions Judge had not enter into the merits of the application. The phraseology of Section 438(1) of the Code of Criminal Procedure, 1973, indicates the test for maintainability of an application for pre-arrest bail is the reason to believe that the applicant will be arrested in connection with a non-bailable offence. The registration of FIR is not a pre-condition to entertain the application for pre-arrest bail (**Gurbaksh Singh Sibbia V/s. State of Punjab**²

5. In the case at hand, since the applicant has been served with the notice pursuant to a complaint filed by Shrinivas Shinde, it cannot be said that the applicant has no reason to believe that he would be arrested in connection with a non-bailable offence. In any event, that question has to be adjudicated. Since the learned Additional Sessions Judge has not entered into the merits of the matter and, thereafter, determined that there is no reason to believe that the applicant would be arrested, I am inclined to allow the application.

6. Hence, the following order :

ORDER

(i) The application stands partly allowed.

² AIR 1980 SC 1632

(ii) ABA No.1674 of 2023 is restored to file of the learned Additional Sessions Judge, City Civil and Sessions Court, Borivali Division, Dindoshi, Mumbai.

(iii) The learned Additional Sessions Judge shall decide the said ABA afresh after providing an opportunity of hearing to the applicant and the prosecution.

(iv) In the meanwhile, the applicant shall not be arrested in connection with the complaint lodged by Shri Shrinivas Shinde, till 7th November 2023.

(v) The applicant shall appear before the learned Additional Sessions Judge on 6 November 2023, on which date the learned Additional Sessions Judge shall consider the prayer for interim relief.

(vi) Application stands disposed.

(N.J.JAMADAR, J.)