

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3487 OF 2023

Manish s/o Mohan Gohil and Others ...Applicants

Vs.

The State of Maharashtra and Others ...Respondents

Mr. Ashok M. Saraogi, for Applicants.

Smt. A. A. Takalkar, APP for State.

Ms. Minal Chandnani with Mr. Naresh Shamnani, through
VC, for First informant.

Mr. Prashant B. Paralkar, PSI, Bhosri Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 13th DECEMBER, 2023

PC:-

1) Heard the learned Counsel for the applicants and the
learned APP for the State.

2) This application is preferred for pre-arrest bail in
connection with C.R. No. 876 of 2023, registered with Bhosari
Police Station, Pimpri Chinchwad for the offences punishable

under Sections 380, 427 and 448 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The indictment against the applicant is that on 6th November, 2023, the applicants and the co-accused with the help of goons demolished the shop of the first informant and four other shops by JCB machines unauthorizedly and illegally and without any intimation. The applicants had allegedly committed theft of the articles from the said shops and caused wrongful loss of Rs.17,40,600/-.

4) The learned Counsel for the applicant submitted that, in fact, the premises in question was acquired in the year 2006, for which the first informant party had already accepted the compensation.

5) Attention of the Court was also invited to an order passed by the Civil Court in Civil Suit No. 138 of 2023 instituted by one Srichand Aswani, whereby the application for temporary injunction came to be dismissed holding, *inter alia*, that the plaintiff had suppressed the material fact that the suit premises was already acquired and the plaintiff was not in lawful possession of the premises.

6) The learned APP and the learned Counsel for the first informant resisted the prayer for pre-arrest bail.

7) The learned Counsel for the first informant submits that the first informant has filed an Appeal against an order passed by the learned Civil Judge and on 9th November, 2023, the learned District Judge, Pune has directed the parties to maintain status-quo. In breach of the said order, the applicants have illegally demolished the premises.

8) The allegations in the FIR appear to have their genesis in the civil dispute over proprietary and possessory title in the suit shops. The Civil Court had recorded that the informant party was not in possession of the suit shop. Undoubtedly, if the applicants have acted in breach of the order passed by the Appellate Court, the consequences in law will follow.

9) In the context of the allegations in the FIR, the custodial interrogation of the applicants, however, does not seem warranted to facilitate further investigation. The only non-bailable offence punishable under Section 380 entails punishment which may extend Seven years. In any event, directions to the applicants to appear before the Investigating Officer may serve the purpose of investigation as such

appearance of the accused before the Investigating Officer would amount to deemed custody within the meaning of Section 27 of the Indian Evidence Act, 1872.

10) I am, therefore, persuaded to exercise the discretion in favour of the applicant.

11) Hence, the following order:-

ORDER

I) In the event of arrest of the applicants in connection with C.R. No. 876 of 2023, registered with Bhosari Police Station, Pimpri Chinchwad for the offences punishable under Sections 380, 427 and 448 read with Section 34 of Indian Penal Code, 1860, the applicants be released on bail on executing a PR Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount.

II) The applicants shall co-operate with the investigation and attend Bhosari Police Station, Pimpri Chinchwad on 21st, 22nd and 26th December, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

III) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first

informant and any of the persons acquainted with the facts of the case

IV) The applicants shall regularly attend the proceedings before the jurisdictional Court.

V) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

VI) The application stands disposed.

[N. J. JAMADAR, J.]