

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

**ANTICIPATORY BAIL APPLICATION NO. 680 OF 2023**

Nitesh Suresh Mishra

..Applicant

Versus

State of Maharashtra

..Respondent

Mr. Shivprasad C. Kanojia for Applicant.

Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 18 JANUARY 2024

PC. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 1033 of 2022 registered at Valiv Police Station, Mira Bhayandar, on 02.10.2022, under section 406 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Shivprasad Kanojia, learned counsel for the applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The F.I.R. is lodged by one Rakesh Talwara on 01.10.2022. He was working as a Manager in a plant of his

brother. They used to get cement, crushed stones and other material for mixing them together in the plant for sending the mixture on different construction sites. One Shankar Chaudhary was employed with them. His job was to weigh the goods, issue receipts, fix and collect the amount. He was supposed to give the account.

4. On 30.09.2022, the informant found that some money was short compared to the available material. Therefore, the CCTV footage was checked. It was observed that the dumper bearing No.MH04-KU-3648 was brought to their plant. On two occasions the receipts were issued regarding the weight of the cement. At the first instance the correct weight was mentioned. Thereafter, half of the cement was offloaded in the godown and again weight receipt was prepared. The half quantity of the cement was sold by Shankar Choudhary for his own benefit causing loss to the informant. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that, he has not played any role in the offence. It is

committed by Shankar Chaudhary. The applicant was not aware about the procedure.

6. Learned APP submitted that co-accused Shankar is not available. Even the CCTV footage referred to in the F.I.R. is not available.

7. I have considered these submissions. The incident is dated 30.09.2022. Learned APP has stated on instructions that, besides this incident, there are no other incidents where similar misappropriation was committed by Shankar Chaudhary by offloading the cement from other trucks. This was an isolated incident. At this stage, the prosecution does not have sufficient material against the present applicant. His name is not mentioned in the F.I.R. The CCTV footage captured of that incident is not available as of now. Therefore, the case against the applicant does not travel beyond mere suspicion. In this view of the matter, custodial interrogation of the applicant is not necessary. He can be protected U/s.438 of the Cr.p.c.

8. Hence, the following order :

**ORDER**

- i) In the event of his arrest in connection with C.R.No. 1033 of 2022 registered at Valiv Police Station, Mira Bhayandar, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Application is disposed of.

**(SARANG V. KOTWAL, J.)**