

MHCC050065452021



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO.1824 OF 2021
(SPL. L.A.C. NO.70/2021)
(CNR NO. MHCC05-006545-2021)**

Bharat Rama Badgekar

Age 43 Years, Occupation: Not mentioned,
Having address at Room No.A/1,
Siddharth Nagar, Rahiwashi Sangh,
Mahakali Caves Road, Near Rebello
Compound, MIDC, Subhash Nagar No.-2,
Andheri (East), Mumbai 400 093. Applicant/Accused

V/s.

(1) The State of Maharashtra

(2) The Senior Inspector of Police,

MIDC Police Station.

.... Respondents

Ld. Advocate Shri Vishal Deshmukh for the Applicant/Accused.

Ld. Addl.P.P. Shri R.C. Savle for the State.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE

SHRI. KRUPESH VIJAY MORE

(C.R.NO.4)

DATE : 28TH DECEMBER, 2021.

ORDER

1. Apprehending his arrest in connection with SPL LAC No. 70 of 2021 registered in MIDC Police Station for the commission of the offence punishable u/Sec. 135 of The Electricity Act, 2003 applicant Bharat Rama Bedgekar has approached this Court for the protection in the form of anticipatory bail under the provisions of Sec. 438 of The Cr.P.C.

2. Investigating Officer and learned Addl.P.P. were directed to file reply, accordingly, detail reply is filed by Investigating Officer vide **Exh. 3**, which is counter signed by the Ld. Addl.P.P.

3. Heard Ld. Advocate Shri Vishal Deshmukh for the Applicant/Accused as well as Ld. Addl.P.P. Shri R.C. Savle for the State at length.

4. The brief contents of the FIR registered by Kaustubh Prakash Pednekar are as follows;

On 16/6/2021 at about 2.00 P.M., officers of Adani Electricity visited the site i.e. Shiv Shakti Mitra Mandal, Andheri (E) and inspected electricity connection having account No.151452406 of Shiv Shakti Mitra Mandal and accordingly conducted site inspection. Thereafter, notice was issued to Shiv Shakti Mitra Mandal for disconnection of meter and meter was removed. Thereafter, applicant received a call from MIDC Police Station for the purpose of enquiry. When applicant attended MIDC Police Station, he came to know that SPL LAC No.70/2021 for the theft of electricity is registered against applicant under section 135 of Electricity Act, 2003.

5. It is contended by Ld. Advocate for applicant/accused that applicant/accused is nowhere concerned with Shiv Shakti Mitra Mandal. His name is falsely implicated. The electricity meter is in the name of Shiv Shakti Mitra Mandal. Applicant is not member of the Shiv Shakti Mitra Mandal. The provisions of section 135 of Electricity Act are not applicable against applicant. Adani Electricity has wrongly mentioned name of the applicant/accused as representative of Shiv Shakti Mitra Mandal. Applicant has no nexus with Shiv Shakti Mitra

Mandal. He has never used electricity of Adani Company. Arrest of applicant is not necessary and justified. Applicant is ready to follow the conditions for anticipatory bail. Hence, it is prayed that applicant be granted anticipatory bail in terms of section 438 of Cr.P.C.

6. Application is strongly opposed by Ld. Addl.P.P. contending that the officers of Adani Electricity on site inspection found that there was theft of electricity and the meter is in the name of Shiv Shakti Mitra Mandal. On inquiry, it was revealed that applicant is the president of Shiv Shakti Mitra Mandal. It is contended that the offence committed by the applicant is serious in nature. Investigation is in progress. The total cost of the theft of electricity is Rs.1,31,241/-. If applicant/accused is released on bail, he is likely to influence the prosecution witnesses. He will not have any fear of law, if granted anticipatory bail. Hence, it is prayed that application be rejected.

7. As per directions in the celebrated judgment of the Hon'ble Apex Court in the case of **Arnesh Kumar vs State Of Bihar & Anr. in Criminal Appeal No.1277 of 2014 (@Special Leave Petition (CRL.) No.9127 of 2013)**, police cannot automatically arrest any accused if the offence alleged is not punishable for more than seven years. The Hon'ble Apex Court has laid down guidelines for the arrest of accused in connection with such offence while giving directions to all the State Governments to instruct its police officers not to automatically arrest accused when the punishment in such cases is less than seven years, whether with or without fine. Therefore, it has to be seen, why the arrest of applicant is necessary? It is really required ? What purpose the arrest of applicant will serve? What object it will achieve and then only power of arrest needs to be exercised.

8. It is further observed by the Hon'ble Apex Court that,

“ We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

9. In view of the above settled law, prosecution has failed to bring on record any document showing that applicant is president of Shiv Shakti Mitra Mandal and the alleged consumer number which is used for theft of electricity is belonging to the applicant. No purpose will be served by the custodial interrogation of the applicant, when he is ready to co-operate in the investigation. The reasons given by the Investigation Officer not to grant anticipatory bail are not justified, therefore, I am of the considered opinion that applicant/accused be released on anticipatory bail. Hence, I proceed to pass following order:

ORDER

1. Anticipatory Bail Application No.1824 of 2021 is hereby allowed.
2. In the event of arrest of the applicant namely Bharat Rama Bedgekar be released on anticipatory bail on executing P.R. Bond of Rs. 15,000/- (Rupees Fifteen Thousand Only), with one surety in the like amount in connection with Spl. L.A.C. No.70/2021, registered with MIDC Police Station for the offence punishable under Section 135 of The Electricity Act, 2003 on following conditions -

i) He shall remain present before the Investigating Officer of MIDC Police Station and co-operate in the investigation on every Monday between 11.00 am to 01.00 pm till further order or till filing of Charge-sheet.

ii) He shall not tamper with the prosecution evidence.

iii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade them from disclosing such a fact to the Court or to any police officer.

iv) Inform MIDC Police Station accordingly.

3. Anticipatory Bail Application No.1824 of 2021 stands disposed of accordingly.

Date: 28.12.2021

(Krupesh Vijay More)

Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi

Dictated on	: 28.12.2021
Transcribed on	: 30.12.2021
Checked & corrected on	: 30.12.2021
Signed on	: 30.12.2021
Sent to Dept. on	:

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER”

Date : 1/1/2022

Time : 3.18 P.M.

UPLOAD DATE AND TIME

Mrs. Mrunal S. Pendkhalkar

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

HHJ Shri Krupesh Vijay More (C.R.No.4)

Date of Pronouncement of ORDER

28.12.2021

ORDER signed by P.O. on

30.12.2021

ORDER uploaded on

01.01.2022