

MHCC050000792022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO.21 OF 2022
(C.R.NO.07/2022)
(CNR NO.MHCC05-000079-2022)**

1. **Adv.Inderpal Singh Balbir Singh Purewal,**
An adult Indian inhabitant,
Age 62 Years, Occupation: Professional,
Residing at 308, Nanak Bunglow,
RSC-21, Near Zoom Plaxa Mall,
Gorai – II, Borivali (W),
Mumbai-400 092.
2. **Mr.Manishankar Gaurishankar Chauhan,**
An adult Indian inhabitant,
Age 48 Years, Occupation: Business / Agriculturist,
Residing at 304, Suraj Vasundhara CHS.,
Thakur Village, Kandivali (E),
Mumbai-400 101.
3. **Mr.Mukesh Narsimha Poojari,**
An adult Indian inhabitant,
Age 40 Years, Occupation: Business,
Residing at 104/F, Gokul Residency,
Thakur Village, Kandivali (E),
Mumbai-400 101.

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4. **Mr.Dhananjay Sarjerao Chavan,**
An adult Indian inhabitant,
Age 39 Years, Occupation: Business,
Residing at 21/1644, Old MHB Colony,
Gorai Road, Borivali (E),
Mumbai-400 091.

...Applicants/Accused

V/s.

State of Maharashtra

Through Charkop Police Station

....Respondent

Ld. Advocate Shri T.R.Patel for the Applicants/Accused.

Ld.APP Shri Imran K. Shaikh for the State.

Ld. Advocate Shri Ashraf A. Shaikh for Intervener.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI N.L.KALE
(C.R.NO.7)

DATE : 10th January, 2022.

ORDER

This is an application u/s. 438 of the Criminal Procedure Code 1973 filed by the applicants for grant of Anticipatory Bail in C.R.No.7/2022 registered at Charkop Police station, for the offence punishable under section 354, 509 r/w.34 of the Indian Penal Code, 1860 and Section 67 of I.T. Act.

Brief facts narrated by the complainant in her complaint as under: -

2. Applicant No.1 - Inderpal Singh was President of NCP, Uttar Mumbai, District. In the year 2009, the informant in this case was become member of NCP Party. In the year 2014, the informant became President of Uttar Mumbai, Mahila Jilha by President of NCP, Mumbai,

Smt.Chitrataai Wagh. It is specifically alleged by prosecution that, applicant No.1 was used to told the informant to sent beautiful women to his office. But, the informant opposed for the same, and hence, applicant No.1 was having a grudge in his mind against the informant. In the year 2017, applicant NO.1 lodged a false case against the husband of informant under NDPS Act. Then in the year 2019, their party nominated the informant as “Karyadhyaksha”.

3. It is alleged further that, applicant NO.1 was always causing disturbance to the social work of informant and was always used to defame the informant. It is specifically alleged that, on 07/10/2021, applicant NO.1 sent Whatsapp message regarding the informant, on group of Uttar Mumbai, Jilha Sevalal, stating that, “Tumko bahotbar nanga kiya hai”. It is alleged further that, applicant Nos.2 and 4 given their favourable reply to the above message of applicant NO.1.

4. It is alleged further that, on 10/10/2021 at 11.00 a.m., there was a meeting of NCP party. At St.Rock High School, Gorai, Borivali (West), Mumbai. At that time, 20 – 22 members of said party were present alongwith informant, and applicants. In that meeting, applicant No.1 and 2 started speaking about the informant. They made wrong statements against the informant. It is alleged further that, the applicant No.1 and others restrained the informant. Mukesh Poojari put his hand on chest of informant and applicant No.1 pushed to her. In short, the applicants committed an act which amounts to outrage the modesty of the informant. The said incident is intervened by persons namely Kiran

More, Sudarshan Rana, Kashinath Narawade, Kailash Deshmukh, Manish Dubey and Dinkar Tawde etc., who were present on the spot at the relevant time.

5. The informant filed her complaint application before Mahila Aayog, Mumbai. Her said complaint is sent to Charkop police station for further investigation. On 24/11/2021, Charkop police recorded the complaint of the informant and registered this FIR against the present applicants.

6. Now, by filing this application, all the applicants claiming pre-arrest bail for them. According to the applicants, they have not committed any offence as alleged against them. They contended that, the informant has lodged false report against them by making false and frivolous allegations in it. In this application, applicants further alleged that, they all are law abiding persons and false complaint lodged against them due to political rivalry only. According to applicants, applicant No.1 had lodged complaint to Sr. Inspector of Charkop on 30/11/2021 regarding fabricating electronic record by the informant and others to implicate them in false crime. Applicant further alleged that, the phone number on which disputed whatsapp message sent is actually not used by the informant but, the said mobile number is of her husband's number. According to applicants, false and fabricated electronic record and evidence created against them to implicate them in a false crime. Applicant prays to allow the prayer.

7. This application is strongly resisted by the Prosecution by filing reply and Additional reply vide Exh.4 and Exh.8 respectively. According to prosecution offences alleged are serious in nature and investigation is in progress. Prosecution further alleged that, applicant No.1 is an advocate by profession and he sent messages on whatsapp chat by which modesty of informant is outraged. So also, the other applicants / co-accused supported to him. According to prosecution, all the applicants in furtherance of their common intention outraged the modesty of informant and there are specific allegations about the same in a complaint.

8. In additional reply Exh.8, Prosecution further contended that, the mobile phones used by the accused / applicants in commission of this crime are to be seized from them. So also, if, Anticipatory Bail will be granted to the applicants then, there is a possibility of tampering of evidence at the instance of the applicants. Prosecution prays to reject the prayer.

9. Ld. Advocate Shri T.R.Patel relied upon, various documents filed alongwith list Exh.3. He submitted that, all the applicants are respectable persons and previously applicant No.1 had filed complaint against husband of informant under NDPS Act. He submitted further that, due to political rivalry all the applicants have been falsely implicated by the informant. He relied upon photographs / copies of whatsapp chat sent by applicants, record of mobile numbers of the applicant and the husband of informant, statements made by their party members namely Seema Dorugade, Manohar Bhatuse, Sanjay Patil, Vaishali Wairalkar etc.

10. This application is strongly resisted by the Intervener / complainant by filing her written objections vide Exh.6. Alongwith her written objections the complainant has filed several documents i.e. copies of complainants made by her to his superior officers / authority, profile details of her mobile number including photo, copies of whatsapp chats in between her and applicant NO.1 etc. According to complainant previously also applicant NO.1 and other applicants harassed her for non- fulfillment of their various demands and when she put grievance to higher authorities about the same, no any action was taken against the applicants. She prays to reject the prayer.

11. Heard Ld. Advocates appearing for the parties. Perused the say filed by I.O. and also perused the documents on which the applicants and Intervener is relying.

12. Ld. Advocate Shri T.R. Patel appearing for applicant submitted further that, in this matter relevant evidence is whatsapp chat messages and the same is available with concerned company / Agency. The evidence in this matter can be available to the Investigating Officer without physical presence of the accused in police custody. He submitted further that, as per submissions of Ld. APP and Ld. Advocate of Intervener, if really, the offences alleged are bailable in nature then why, the prosecution pressing for arrest of the applicants?

13. On the contrary, Ld. APP Shri Imran K. Shaikh submitted that, there are specific and serious allegations against the applicants which constitutes the offences alleged against them. He submitted further that,

offences alleged are bailable in nature and hence, provision U/s.438 of Cr.PC., is not applicable to case in hand to allow the prayer. According to him, applicants are high profile persons in society and there is a possibility of tempering of witnesses from them, if, pre-arrest bail will be granted to them. According to him, mobile phones of the applicants are yet to be recovered and for detailed interrogation regarding whatsapp chat and other investigation, presence of the applicants with police is quite necessary. He prays to reject the prayer.

14. According to Ld. Advocate of the applicants, there is a delay in lodging FIR in this regard and the same is not explained properly. But, on perusal of FIR it appears that, the first alleged incident of whatsapp chat is happened on 07/10/2021. Second incident of outraging modesty of informant alleged to be happened on 10/10/2021. In this matter, crime came to be registered at Charkop police station on 05/01/2022. But, in FIR itself, it is mentioned that, Charkop Police station received complaint application dtd.23/11/2021 from “Mahila Aayog”. On the basis of the same, this crime is registered. No doubt, statement of complainant is recorded on 24/11/2021 by Charkop police. But, in say Exh.4 filed by Investigating Officer, it is mentioned that, the complainant had made her grievance before State Mahila Aayog, prior to lodging a complaint in Charkop police station. Thus, it appears that, priorly the complainant had approached to “Mahila Aayog” for alleged acts of accused. Hence, at this stage, findings can not be recorded that, there is inordinate delay at the instance of complainant to put up her grievance about the incidents.

15. Ld. Advocate of the applicants placed his reliance upon the findings recorded by **Hon'ble Bombay High Court in the matter of (Pramod Dhumal V/s. The State of Maharashtra, in ABA NO.1114/2020)**, in that matter the applicant therein, had sent messages and offending images to the complainant about sexual desire. On the basis of complaint lodged by said lady an offence U/s.67(A) of I.T. Act and 354(D) of IPC was registered against the applicant therein. In that matter, most of the part of investigation based on electronically published or transmitted obscene material. In that matter, Hon'ble Bombay High Court granted pre-arrest bail to the applicant therein. No doubt, in the above matter Hon'ble Bombay High Court has granted pre-arrest bail to the applicant therein. But, the facts in that matter are not identical and similar with the facts of case in hand.

16. In this matter, as per additional say Exh.8 filed by the I.O., mobile phones through which alleged messages regarding outraging the modesty of complainant were sent are yet to be recovered / seized. But, in the above matter, the applicant therein had handed over his mobile phone before the I.O. therein. Hence, actually in that matter, there was no any recovery or seizure of the device / mobile phone from the accused therein. But, as discussed above, as per say Exh.8, I.O. wants to seize the mobile phone / cell phones of the applicants through which disputed messages were sent. Considering this aspects, I am of the humble view that, the findings recorded by Hon'ble Bombay High Court in the above matter are not applicable to case in hand.

17. No doubt, according to accused / applicants, the whatsapp

messages which allegedly sent by applicant No.1 were sent on mobile number of husband of the complainant and those were not directly sent to the complainant. No doubt, accused filed record obtained by them to show that, the mobile number on which disputed messages sent is used by husband of the complainant and those chats made with husband of the complainant. But, so far as, these aspects are concerned, though the applicants have filed documents favourable to them, separate investigation at the instance of investigating agency is necessary to find out the truth. Whether, the disputed messages are really a chat between applicant No.1 and husband of complainant or else? This aspect will be decided in course of investigation by police. Hence, while deciding this application it would be not lawful to record the findings that, documents on which the applicants relying are fully trustworthy and reliable. Therefore, this is not a stage to record findings by this court that, disputed messages are not sent directly to the complainant.

18. The record further shows that, allegations in respect of first incident of outraging the modesty of complainant is committed by applicants by sending messages in filthy language on whatsapp group. So far as, these allegations are concerned, this offence is allegedly committed through electronic media i.e. mobile phone. The alleged messages are read by various group members in that group. To prove offences punishable U/s.354 of IPC., it is duty of prosecution to *prima facie* established that, the accused / applicants committed alleged act with an intention to outrage modesty of the said lady. For alleged messages prosecution wants to conduct detailed inquiry and investigation and to

obtain detailed information about use of mobile phones and respective mobile numbers.

19. It is a fact that, in this matter, most of the investigation is relating to electronic media / device. The record clearly reflects that, all the accused / applicants used mobile phones for sending the disputed messages on whatsapp group. As per submissions made by APP and grounds in additional reply Exh.5 filed by prosecution, those devices used by the applicants yet to be seized. Hence, ground of seizure of cell phones of the applicants is found to be legal and proper to reject the prayer in this application. No doubt, so far as, actual chat data of disputed messages is concerned, the I.O., can obtained the same from the concerned mobile company or the concerned authority. But, for seizure of cell phones used by the accused in commission of alleged crime, their custody with I.O. is quite necessary.

20. For aforesaid reasons, I am of the view that, documents filed by the applicants at this stage can not be found to be fully trustworthy and reliable to use desecration in their favour. On the contrary, the documents filed by Intervener and from say filed by I.O., it can be said that, physical presence of the applicants with police is very necessary for seizure / recovery of mobile phones used by them in commission of the crime. In a result, the applicants are not entitled for grant of pre-arrest bail in their favour. Hence, this application deserves to be rejected. Hence, I proceeded to pass following order:

ORDER

1. **Anticipatory Bail Application No.21 of 2022 stands rejected.**

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2. Anticipatory Bail Application No.21 of 2022 is disposed of accordingly.

(Dictated and pronounced in open Court)

Date: 10.01.2022

**(N.L.KALE)
THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Dictated typed on	: 10.01.2022
Checked & corrected on	: 10.01.2022
Signed on	: 10.01.2022

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

10.01.2022 AT 02.14 P.M.

MRS.M.M.PALAV
STENOGRAPHER H.G.

Name of the Judge (With Court Room No.)	HHJ SHRI N.L.KALE (Court Room No.7)
Date of Pronouncement of ORDER	10.01.2022
ORDER signed by P.O. on	10.01.2022
ORDER uploaded on	10.01.2022