

MHCC020080252024



**IN THE COURT OF SESSIONS FOR GREATER BOMBAY
AT BOMBAY**

ANTICIPATORY BAIL APPLICATION NO.1061 OF 2024

IN

C.R.NO.180 OF 2024

Jayesh Kantilal Shah,

Aged 62 years, Occ : Diamond

Trader, Flat No.301, Aksha

CHS Ltd., Carter Road No.5,

Opp Blue Sky Building,

Borivali East, Mumbai – 400

066

...Applicant

Vs.

The State of Maharashtra

(Through B.K.C. Police

Station, in C.R.No.180 of

2024

...Respondent

**CORAM: HH THE ADDL.SSESSIONS JUDGE
SHRI. V. M. SUNDALE
(Court Room No.27)**

DATE : 17th May 2024

Shri Pranay Saraf, learned advocate for the applicant.

Ms. Ratnavali Patil, learned APP for the State.

ORDER

01. The applicant Mr. Jayesh Kantilal Shah has filed this application under Section 438 of the Code of Criminal Procedure for

granting pre-arrest bail in connection with Crime No.180/2024 registered in B.K.C, Police Station, Mumbai for the offence under Section 408 and 420 of the Indian Penal Code, on the allegations that the co-accused committed criminal breach of trust with the informant and the applicant purchased the stolen diamonds.

02. The investigating officer through learned APP filed reply (Exh.02) and strongly opposed the application. It is contended that the offence is serious and investigation is in progress. The presence of the applicant is necessary to recover stolen diamonds. The applicant inspite of service of notice under Section 41(A) of Code of Criminal Procedure did not appear before the investigating officer. According to the investigating officer in such circumstances, if the applicant released on pre-arrest bail, there is possibility of hampering further investigation, pressurizing the prosecution witnesses and committing similar offence. Hence, the investigating officer prayed to reject the application.

03. Heard Shri Pranay Saraf, learned advocate for the applicant and Ms. Ratnavali Patil, learned APP for the prosecution.

04. I have carefully gone through record with reference to submission of both the sides. I have also gone through the decisions of the Hon'ble Supreme Court in case of **"Arnab Manoranjan Goswami vs. The State of Maharashtra & Ors., Criminal Appeal No.742/2020 to 744/2020, dated 27/11/2020** and in case of **"Shiv Kumar vs. State of Madhya Pradesh, Criminal Appeal no.1503/2022"** cited by the applicant. The name of the applicant is not mentioned in the First Information Report. It appears that in the course of investigation it is transpired that the applicant purchased the stolen diamonds from the

co-accused. The investigating officer opposed the application mainly on the ground that the applicant inspite of service of notice under Section 41(A) of Code of Criminal Procedure did not appear before him and co-operate in the investigation. He further submits that the presence of the applicant is necessary to recover stolen diamond. The charges levelled against the applicant are serious and investigation is at primary stage. The physical presence of the applicant is necessary to recover stolen diamonds. The applicant failed to appear before the investigating officer though served with notice under Section 41(A) of Code of Criminal Procedure. In such circumstances, the applicant is not entitled to rely on the decision of Hon'ble Supreme Court decisions "**Arnab Manoranjan Goswami vs. The State of Maharashtra & Ors**" Criminal Appeal No.742/2020 to 744/2020, dated 27/11/2020 and in case of "**Shiv Kumar vs. State of Madhya Pradesh, Criminal Appeal no.1503/2022.**" In the facts and circumstances of the case the applicant is not entitled to release on pre-arrest bail. Hence, the following order is passed.

ORDER

1. Anticipatory Bail Application No.1061 of 2024 is rejected.
2. Thus, Anticipatory Bail Application No.1061 of 2024 stands disposed of.



(V. M. Sundale)
Addl.Sessions Judge,
City Civil & Sessions Court,
Gr. Mumbai

17/05/2024

<u>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”</u>		
Upload Date	Upload Time	<u>Name of Stenographer</u>
04/06/2024	1.00 p.m.	Mrs. M.S. Putta
Name of the Judge (With C.R. No.)		HHJ Shri VM.Sundale (C.R.No. 27)
Date of Pronouncement of JUDGEMENT /ORDER		17/05/2024
JUDGEMENT /ORDER signed by P.O. on		03/06/2024
JUDGEMENT /ORDER uploaded on		04/06/2024