

(1979) 08 BOM CK 0038**Bombay High Court****Case No:** Criminal Application No. 840 of 1979

Fairozkhan Abdulla Deshmukh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Aug. 8, 1979**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 408, 438

Hon'ble Judges: S.C. Pratap, J**Bench:** Single Bench**Advocate:** P.D. Kamerkar, for the Appellant; K.H. Chopra, Public Prosecutor, for the Respondent**Final Decision:** Allowed**Judgement**

S.C. Pratap, J.

This is an application for anticipatory bail under the provisions of section 438 of the Code of Criminal Procedure. In respect of an alleged offence u/s 408 of the Penal Code committed in early 1977, a complaint has been filed against the petitioner herein with the Malad Police Station on 13th July, 1979 being Crime Register No. 359 of 1979.

2. The petitioner is represented by the learned Advocate Mr. P.D. Kamerkar. The State appears through its learned Public Prosecutor Mr. K.H. Chopra.

3. The learned Public Prosecutor initially sought to oppose the grant of anticipatory bail but later on stated that the State would have no objection to the grant of anticipatory bail, provided appropriate terms and conditions are laid down in that behalf. Mr. Kamerkar, the learned Advocate for the petitioner, agreed to abide by such terms and conditions as this Court may deem fit to impose in the aforesaid behalf. Even apart from the concession by the learned Public Prosecutor on the question of grant of anticipatory bail, I am of the view that this indeed is a fit case for the exercise of powers u/s 438 of the Code of Criminal Procedure. This does not

appear to be a case where the actual physical custody or detention of the accused can be said to be essential for the purposes of investigation. This is not a case where the liberty of the accused need be restrained in the aforesaid manner. Investigation can proceed in a case such as this even without the physical custody of the accused. In these circumstances, I am even on merits inclined to grant this application, though, of course, subject to conditions.

4. In the result, I allow this application and direct that in the event of the petitioner herein (Fairozkhhan Abdulla Deshmukh) being arrested on an accusation of having committed a non-bailable offence, vide Crime Register No. 359 of 1979 with the Malad Police Station, he shall be released on bail in the sum of Rs. 2000/- with one surety in the like amount. As condition of this order, I direct that the petitioner shall make himself available for interrogation by the police authorities of the Malad Police Station for seven days with effect from Thursday, the 9th August, 1979, from 11 a.m. to 5 p.m. on each of these seven days and thereafter only when the police authorities fairly and reasonably require him in that behalf. As the petitioner is a resident of village Tudil in Mahad Taluka of Kulaba District, the police authorities should take care to see that he is called for further interrogation after the aforesaid period of seven days only if he is really required in that behalf. But if so required; the petitioner shall make himself available accordingly. As a further condition, I direct that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer. As a further condition, I direct that the petitioner shall not leave India without the previous permission of the Court, this condition, however, to remain in force till 31st December, 1979 unless otherwise got extended from the Court by the police authorities. Order accordingly.