

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

ANTICIPATORY BAIL APPLICATION NO.1971 OF 2016

Nilesh S/o. Dayanand Chumble ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

AND

ANTICIPATORY BAIL APPLICATION NO.85 OF 2017

Mayur Jayantilal Anam ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr. Prashant Rajput for the Applicant in ABA/1971/2016.

Mr. Aashish Satpute for the Applicant in ABA/85/2017.

Smt. J.S. Lohokare, APP for the Respondent – State.

CORAM : A.S.GADKARI, J.

DATE : 18th DECEMBER 2017

P.C.:

. By reasoned Orders dated 16.02.2017 in Criminal Anticipatory Bail Application No.1971 of 2016 and dated 24.01.2017 passed in Anticipatory

Bail Application No.85 of 2017, the applicants were granted interim relief by this Court.

2. The record indicates that the complainant Mr. Uday Joshi has filed a complaint bearing C.C.No.506/SW/2015 in the Court of Metropolitan Magistrates, 66th Court at Andheri, Mumbai and an Order under Section 153(3) has been passed by the concerned Court. In pursuance of the said Order, the present Crime No.02/2016 has been registered by the Powai Police Station. The police are seeking custody of the applicants in the said crime, which is registered in pursuance of the Order passed under Section 156(3) of Cr.P.C. as noted earlier. The record indicates that, the complaint filed by first informant was supported with his affidavit dated 06.02.2016 and the mandate of law as contemplated under Section 200 of Cr.P.C. i.e. the said complainant has not been examined on oath by the concerned Magistrate.

3. The basic tenet of law as contemplated under Section 200 of Cr.P.C. has not been complied with, it raises a serious doubt about the validity of issuance of the said Order passed under Section 156(3) of the Cr.P.C. by the concerned Magistrate. Apart from the said fact, as has been held by the Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre Vs.*

State of Maharashtra & Ors., reported in AIR 2011 Supreme Court 312, and in particular in paragraph 112(v) of the said decision, this Court is of the view that, the accusations have been made against the applicants only with the object of injuring or humiliating the applicants by arresting them.

5. In view of the above, the applicants deserve to be protected by pre-arrest bail. Hence, the Orders dated 24.01.2017 and 16.02.2017 passed in Anticipatory Bail Application No.85 of 2017 and Anticipatory Bail Application No.1971 of 2016 respectively are hereby confirmed. However, the condition to attend the concerned police station is waived.

6. Applications are allowed in the aforesaid terms.

(A.S.GADKARI, J.)