



This order has been corrected pursuant to order of speaking to the minutes dated 14/10/2024.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO. 1220 OF 2024
WITH ANTICIPATORY BAIL APPLICATION NO. 1343 OF 2024
WITH CRIMINAL APPLICATION NO. 3023 OF 2024
WITH CRIMINAL APPLICATION NO. 3024 OF 2024
WITH CRIMINAL APPLICATION NO. 3025 OF 2024
WITH CRIMINAL APPLICATION NO. 3036 OF 2024
WITH CRIMINAL APPLICATION NO. 3335 OF 2024
WITH CRIMINAL APPLICATION NO. 3472 OF 2024
WITH CRIMINAL APPLICATION NO. 3487 OF 2024
WITH CRIMINAL APPLICATION NO. 3624 OF 2024**

**ARCHANA SURESH KUTE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Vishal Kale, with Mr. S. V. Suryawanshi, with Mr. Prashant Shinde,
Advocates for the applicants

Mr. P. K. Lakhotiya, APP for the respondent/State

Ms. Pradnya Talekar, Advocate for Assist to APP

Mr. G. D. Maske, Advocate for the applicants in CA No. 3023/2024

Mr. A. D. Gade, Advocate for the applicant in CA No. 3024/2024

Mr. P. D. Jarare, Advocate for the applicant in CA No. 3025/2024

Ms. Sakshi A. Kale h/f Mr. A. B. Kale, Advocate for the applicant in CA
No. 3335/2024

Mr. R. M. Jagtap, Advocate for the applicant in CA No. 3487/2024

Mr. M. D. Bharad, Advocate for the applicant in CA No. 3624/2024

CORAM : R. M. JOSHI, J.

DATE : 10th OCTOBER, 2024

PER COURT :-

1. At the outset, Ms. Vritee Soni, learned counsel appeared via Video Conferencing and recused herself from the proceedings as the applicant has appointed another lawyer who is present before this Court. She is discharged.

2. Applicant apprehends arrest in connection with Crime No. 238/2024 registered with Shivaji Nagar Police Station, Dist. Beed for the offences punishable under Sections 420, 406, 409, 120-B of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999. This application is filed with following prayer clause:

"A. Pass necessary orders and directions, thereby granting Anticipatory bail to the Applicant Mrs. Archana Kute in the event of arrest in FIR No. 238 of 2024 dated 26.05.2024 under Sections 120-B, 406, 409, 420 r/w Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999 and in relation to any FIR, which may be registered in future, pertaining to the Dnyanradha Multistate Cooperative Society."

3. Learned APP as well as learned counsel appearing on behalf of the victims who have filed applications to assist APP raised preliminary objection with regard to the maintainability of the application. It is their contention that it is open for the applicant to move an application before the Court of Sessions for seeking pre arrest bail and any application directly filed before this Court need not be entertained.

4. Learned counsel for the applicants has relied upon provision of Section 438 of the Code of Criminal Procedure to contend that there is no embargo for this Court to entertain pre arrest bail, as both High Court as well as Sessions Court, can exercise such power. He contends that there are 41 first information reports filed against applicant and other accused persons. It is his submission that applicant is wife of the main accused and that in view of the communication addressed by the Deputy Superintendent of Police dated 16/06/2024 to the District and Sessions Judge, Beed, there is danger to her life too. On these submissions it is contended that the present application is maintainable, and these facts and circumstances application deserves to be entertained. He placed reliance on judgments referred in the application. This Court has carefully gone through the same.

5. In view of the provisions of Section 438 of Cr.P.C. there cannot be a dispute about the proposition that High Court as well as Sessions Court exercise concurrent jurisdiction in respect of grant of pre arrest bail. Thus, the question is not of maintainability of the application but it is entertainability.

6. It is long settled practice that whenever two forums are available it is necessary for the litigant must approach the forum which is

lowest in the hierarchy. No doubt, in exceptional cases, directly any proceedings can be filed before the higher Authority. Thus, for the entertainment of application directly before this Court, without exhausting remedy of making application under Section 438 of Cr.P.C. before Court of Sessions, there must be exceptional and justified case made out.

7. First of all it needs to be recorded that merely because number of first information reports are lodged against the present applicant that would not create any right in favour of an accused, to file an application before High Court directly. Pertinently, the applicant is not only seeking anticipatory bail in connection with C.R. No. 238/2024 registered with Shivaji Nagar Police Station, District Beed seeks pre arrest bail in respect of any future crime registered against her. This is wholly impossible in law. In so far as, the contention with regard to the apprehension of danger to life is concerned, perusal of the communication dated 16/06/2024 addressed by the Deputy Superintendent of Police indicates that there was a danger to the life co-accused as the investors had banged into the court premises. In so far as present application is concerned, the application is for anticipatory bail and as such there is no question of the said threat for the co-accused being applicable to her.

8. Though it is held that the application is maintainable, in the facts and circumstances of the case, there are not an exceptional circumstances to entertain application, without exhausting remedy before Court of Sessions. Hence, application stands disposed of. Pending applications, if any, stand disposed of.

9. It is open for the applicant to move the concerned Sessions Court for seeking pre arrest bail, in accordance with law.

(R. M. JOSHI, J.)

ssp