

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

Anticipatory Bail Application No.1382 of 2024

Prashant Jairaj Tambe

Age 36 years, Occ: Advocate

R/o, Om Shreegajanan Krupa,

Plot No.203, Shirgaon,

Badlapur(W), Dist-Thane ... Applicant.

Vs.

The State of Maharashtra

(through Badlapur Police Station,

Thane Vide CR No.118/2024) ... Respondent.

Mr Nitesh J. Mohite a/w Shivram A. Gawade for the applicant.

Ms Anuja Gotad, APP, for the respondent/ State.

PSI CS Thakare, attached to Badlapur (West) Police Station, is present.

Coram: RN Laddha, J.

Date: 9 July 2024.

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.118 of 2024, registered at Badlapur (West) Police Station, Thane, for offences punishable under Sections 420, 465, 466, 468, 471,120-B read with 34 of the Indian Penal Code.

2. According to the prosecution, on 8 February 2024, the applicant and co-accused conspired to present a forged order

bearing the seal and signature of the Sub-Divisional Officer in Ulhasnagar. This order was falsely claimed to have been passed on 4 October 2023, despite a pending RTS/delay application vide No.39 of 2023 related to Survey No.28/2011. The purpose of this forgery was to manipulate revenue records for their economic gain.

3. Mr Nitesh Mohite, the learned Counsel, appearing on behalf of the applicant, asserts the applicant's innocence. He submits that the applicant's only involvement was visiting the Talathi and Circle Officer's office, where he lifted the alleged forged order from the table. The FIR indicates that a co-accused supplied the forged order to the same office. Nowhere in the FIR it suggests that the applicant prepared the alleged forged order. According to the learned Counsel the tenor of the FIR does not imply any intention to harm the public or any other person attributable to the present applicant. Since the alleged forged order remained unacted upon, there was no harm caused. Furthermore, the FIR does not demonstrate any dishonest or fraudulent conduct by the applicant. All allegations are based on existing documentary evidence available to the investigating agency, rendering custodial interrogation unnecessary. The applicant is willing to cooperate with the investigation and comply with any terms and conditions imposed by the Court.

4. On the other hand, Ms Anuja Gotad, the learned Additional

Public Prosecutor representing the respondent/ State, submits that the applicant/accused, along with other co-accused, have conspired to create a forged judgment and order, having a seal and signature, related to Survey No.28, pretending to be delivered by Sub-Divisional Officer, Ulhasnagar, despite knowledge of a pending delay application. The accused then used this fabricated document for revenue purposes. The offence is serious and requires detail investigation, including recovery of seal of the Tehsil office. The investigation is in progress.

5. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

1 2024 SCC OnLine SC 282.

6. The Hon'ble Supreme Court in ***Ashok Kumar Vs State of Union Territory Chandigarh***² observed as follows:

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

7. After examining the records, it becomes evident that there is evidence linking the applicant to the present crime, and a specific role has been attributed to him. The applicant's name appears in the FIR. Necessary documents and the seal used in the crime are yet to be recovered. The investigation is at nascent stage. Given the seriousness of the offence, a thorough investigation is essential. The possibility of tampering evidence and pressurizing prosecution witnesses cannot be ruled out. Considering all these aspects and the ongoing investigation, the arguments put forth by the learned APP against granting anticipatory bail appears justified. The custodial interrogation of the applicant would be necessary for further investigation.

2 SLP (Cri.) No.9949 of 2023 dated 1 March 2024

8. In light of the above, the present application stands disposed of accordingly.

[RN Laddha, J.]