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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

902 ANTICIPATORY BAIL APPLICATION NO. 630 OF 2024

Amol Devram Varde

VERSUS

The Railway Police Force (RPF) And Another

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Mr. Rajendra Deshmukh, Senior Advocate along with Mr. Nimish S.  
More i/b Mr. Devang R. Deshmukh, Advocate for Applicant

Mr. R.B. Bagul, Advocate for Respondent No.1

Ms. P.V. Diggikar, APP for Respondent No.2 - State

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CORAM : HITEN S. VENEGAVKAR, J.

DATE : 30 SEPTEMBER, 2025

**PER COURT :-**

1. The present application is filed under Section 438 of Code of Criminal Procedure (Cr.P.C.) 1973 seeking anticipatory bail in connection with C.R No. 18 of 2023 registered before the Judicial Magistrate, First Class (Railways), Aurangabad for the offence punishable under Section 3(a) of the Railways Property (Unlawful Possession) Act 1966 (in short, 'RPUP' Act). This court, by order dated 19<sup>th</sup> April 2024 granted interim protection to the present applicant, directing him to attend the concerned police station from 26<sup>th</sup> April 2024 to 2<sup>nd</sup> May 2024 and to co-operate with the investigation. The learner APP does not dispute that the applicant has scrupulously complied with the directions and attended the police station as required. The interim protection has remained in force since then.

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2. The prosecution story in brief is that on 30<sup>th</sup> December 2023, one Head Constable Kailash Kokre of Malegaon Police Station informed the Railway Police Force that he had detained one person, namely Shaikh Hussain, having several pieces of railway signaling cables in his possession. Said person could not produce any valid authorization for possessing or transporting such cables, acting on the said information, Officers from the Railway Police Force visited the spot at Malegaon, District Washim and seized around 1,235 k.g. of unserviceable insulated railway signaling cables valued at approximately Rs. 1,48,000/-

3. Upon interrogation of Shaikh Hussain, it was alleged that five other persons were involved in the theft or unlawful possession of the railway property. Consequently, six accused persons were arrested on 31<sup>st</sup> December, 2023 and were produced before the learned railway magistrate for remand. All the arrested persons were subsequently released on bail on 1<sup>st</sup> January 2024. The name of the present applicant who is a serving signal engineer with Nanded Railway Division, does not appear either in the FIR or in the remand papers of those arrested persons.

4. The record further reveals that the applicant joined services as a Signal Engineer in the year 2015 and was posted at Aurangabad at the relevant time. Pursuant to a notice issued by the railway police, the

applicant attended the office of the Investigating Officer at Nanded on multiple occasions, including on 21<sup>st</sup> December, 2023 and again on 6<sup>th</sup> March 2024 and extended full cooperation during the inquiry. It is not in dispute that he has attended whenever called and that there was no non-compliance on his part.

5. The learned advocate for the applicant contains that there is no material whatsoever to connect with the crime in question. It is urged that neither the seizure panchanama nor the statements of any of the co-accused disclose any role of the present applicant. The applicant was not found in possession of any railway property, nor was any such property entrusted to him. It is further contended that the confessional statements recorded by the RPO from the arrested accused under section 8(2) of the RPUP act do not attribute any involvement to the applicant. Therefore, his arrest at this stage when investigation is complete and the complaint already filed would serve no useful purpose.

6. Learned advocate further pointed out that the offence under section 3 of RPUP act is punishable with imprisonment which may extend to 5 years or with fine or with both and in the absence of special reasons the minimum sentence prescribed is 1 year with fine of Rs. 1,000/-. Thus, the offence is clearly punishable below 7 years. It is

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therefore submitted that custodial interrogation is not necessary, especially when the applicant has cooperated with the investigation for several months and has been under interim protection.

7. On the other hand, learned APP opposed the application contending that the applicant is the mastermind behind the crime. According to the prosecution, the cables were removed and transported through connivance of certain officials of the signal department and the applicant being a senior Signal Engineer might have facilitated the same. It is urged that custodial interrogation is necessary to unearth the larger conspiracy and to trace the source of the railway property.

8. On a pointed query by the Court as to whether the investigation is complete and the charge-sheet or complaint has been filed, learned APP fairly submitted that the complaint has already been lodged before the learned Judicial Magistrate (Railways) and the matter is pending trial. Thus, investigation is over and no further recovery is to be effected from the applicant.

9. The offence alleged against the applicant is under section 3 (a) of the RPUP Act. The said section reads as follows.

*“3. [Penalty for theft, dishonest misappropriation or unlawful possession of railway property] - [Whoever commits theft, or dishonestly misappropriates or is found, or is proved] to have been, in possession of any railway property reasonably suspected*

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*of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable —*

*(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees”*

10. Thus, it is evident from the statutory provision that the maximum punishment prescribed is 5 years. Thus, the offence is punishable below 7 years.

11. In the context of the section 438 of CrP.C. the principles laid down by the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565, (1980) 2 SCC 565 and reiterated by the Constitution Bench in **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1 are well settled. The power to grant anticipatory bail is an extraordinary remedy to prevent arbitrary arrest and humiliation, and once the applicant demonstrates co-operation with the investigation and absence of likelihood of misuse, the protection ordinarily continues till the conclusion of the trial unless there are exceptional circumstances justifying its withdrawal.

12. In the present case, the record unmistakably shows that the applicant has honoured all directions of this court and of the

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investigating officer. There is nothing on record to show that he has attempted to evade investigation, tamper with the evidence or influence any witnesses. His conduct has remained fair throughout. The co-accused who were actually found in possession of the railway property, have already been released on bail by the competent Court. The applicant was not apprehended on the spot, nor is any recovery shown from him.

13. The submission of the learned APP that the applicant is the mastermind is based on mere suspicion and is not sustained and is not substantiated by any concrete material. Once the complaint has been filed and the investigation is concluded, the need for custodial interrogation does not survive. The liberty of an individual cannot be curtailed on unverified assumptions when investigation has run in its course.

14. The RPUP Act, though a special statute, does not create an offence punishable with life imprisonment or death. Section 3 prescribes punishment below 7 years. The offence is non-bailable, but not so grave as to justify pre-trial incarceration, particularly when the accused has been cooperative. The purpose of the custodial interrogation is primarily to facilitate investigation, once investigation is over, arrest loses its rational and becomes punitive.

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15. It is well settled that anticipatory bail, once granted, should not ordinarily be limited by time unless circumstances warrant its cancellations. The same principle has been narrated in the case of *Sushila Aggarwal*, (supra), where the Hon'ble Apex Court observed that the protection under Section 438 of Cr.P.C. need not be time-bound and may continue till the end of trial, subject to the conditions imposed and the right of the prosecution to seek cancellation upon misuse.

16. In the light of these settled principles, I find no reason to deny protection to the present applicant. The interim protection granted earlier deserves to be confirmed. The applicant being a government employee in a responsible post, is unlikely to abscond or evade trial. There is no allegation of violation of the interim conditions.

17. Considering the entire material on report, the stage of proceedings, the conduct of the applicant and the nature of the offence, I am satisfied that this is a fit case to grant anticipatory bail.

18. In the light of the above, the application is allowed and the interim protection granted to the applicant by order dated 19<sup>th</sup> April, 2024 stands confirmed on the same terms and conditions.

[ HITEN S. VENEGAVKAR ]  
JUDGE