



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 902 OF 2025

Nilesh Pandurang Haral

....Applicant

VERSUS

The State of Maharashtra & another

.....Respondents

.....

Mr. M. S. Deshmukh, Advocate for Applicant.

Mr. A. M. Phule, APP for the State.

CORAM : ADVAIT M. SETHNA, J.

DATE : 2 JULY, 2025.

P. C. :

1. The Application has filed this Application since he apprehends his arrest.

2. The proceedings relate to C. R. No. 106/2025. The First Information Report (for short '**FIR**') is lodged on 1 April 2025 at 23.17 hours by the Dhule (City) Police Station, District Dhule. The occurrence of the incident is stated to between 29 March 2025 and 30 March 2025 between 22.30 hours to 9.30 hours. The alleged offences are under Sections 305, 331(3), 331(4), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short '**BNS**'). The Informant is one Nilesh Shriram Pawar, aged 46 years.

FACTS IN THE FIR :

3. The Informant Nilesh has got his name mutated with respect to Compartment No. 61 of the Municipal Corporation, Dhule. He is running a business in Tours and Travels. Regular Civil Suit Nos. 59/2022 and 27/2022 in respect of the said shop which is also the suit property are pending in the Civil Court. On the date of filing complaint, said compartment/shop was in possession of the Informant and he was dealing business of wholesale medicines since 2022 in the said shop. On 29 March 2025 he closed the shop and on 30 March 2025 at 9.30 am when he opened the shop as usual, he found the shatter of the shop was open. The present Applicant was present in the shop with 3 to 4 persons. All the medicines and other articles in the shop were missing. When the Informant asked the Applicant about these articles in the shop, the Applicant informed the Informant that the shop belongs to him and the Informant may taken any action against the Applicant that he may so desire or wish. He further stated that many cases are pending against him and nobody can cause any harm to him. The Informant got scared because of such threats. Accordingly, he lodged report with the Police Station. Thereafter, on the day of lodging FIR, he saw the CCTV Footage of the adjacent shopkeepers. It was found that the Applicant and 4 to 5 persons broke open the lock of the shop and carried the articles in two vehicles. It is alleged that even though two civil suits are pending in the Court, the Applicant took illegal possession of the said shop. Therefore, on 1 April 2025 the Informant approached the Police Station for lodging report and gave description and value of articles consisting of medicines, refrigerator, computer, printer, inverter, DVR, chairs etc. worth Rs. 27,08,990/-.

In such circumstances, the report was filed by the Informant and the FIR was accordingly lodged.

SUBMISSIONS :

4. The learned Advocate for the Applicant would submit that the complaint leading to the FIR is a clear attempt to falsely implicate the Applicant. He would submit that before registering the present crime on 1 April 2025, the wife of the Informant one Sarika had filed RCS No. 27/2022 in January 2022. The Informant himself had also filed RCS No 59/2022 in February 2022 seeking declaration that the registered agreement between the Applicant and the Municipal Corporation, Dhule dated 2 December 2021 whereby the shop in question was transferred in favour of the Applicant be declared as null and void. Such proceedings are pending before the Civil Court. He would then submit that in RCS No. 27/2022, initially when an application below Exhibit 5 for temporary injunction was filed, vide order dated 20 January 2022, the learned 4th Civil Judge Junior Division, Dhule observed that an agreement was executed in favour of Defendant No. 4 i.e. the present Applicant regarding the suit property and Defendant is in possession of the property vide Consent Deed dated 10 February 2020. He would draw attention of the Court to the order passed below Exhibit 5 in RCS No. 27/2022 to submit that the Court has categorically recorded in Paragraph No. 10 that Defendant No. 1 i.e. the present Applicant is prima facie in possession of the suit property i.e. the said shop vide Consent Deed dated 10 February 2020. In these circumstances, it is not feasible to grant any ad-interim ex-parte injunction against the Defendants, including the present Applicant. He would submit that the said order

holds the field even today. According to him, the above fact would make it clear that the dispute is purely of civil nature. It is difficult even to believe that the allegation of theft can be sustained in one's own shop. He would therefore submit that the custodial interrogation is definitely not warranted in the given facts and circumstances and the ABA be allowed.

5. On the other hand, the learned APP would vehemently oppose the Application. He would rely on the case diary/papers which are also produced before the Court. To support the contents of the FIR, he would draw the attention of the Court to the Panchanama dated 4 April 2025 which reveals the manner in which the Applicant along with 4 unknown persons has gushed into the shop and has committed theft. Not only that but it would also reveal that they broke open the lock of the said shop in a manner which is completely illegal and unknown to law. In such facts and circumstances, according to the learned APP, the sections in the FIR are clearly applicable qua the present Applicant. He would also submit that there are four criminal antecedents against the Applicant being CR No. 355/2022, 349/2022, 95/2022 and 86/2022 registered against this Applicant for commission of several offences under the IPC and BNS, some of which are common to the present proceedings. The learned APP would submit that substantial recovery of the stolen articles is yet to be done. For this, custodial interrogation of the Applicant is imminent. He would thus submit that the Application be rejected.

FINDINGS :

6. Heard the learned Advocates for the parties and with their assistance perused the record.

7. Having perused the contents of the FIR and the record available with the Court, the learned Advocate for the Applicant would be justified in submitting that the proceedings in the present case has all trappings of a civil matter and entail civil consequences. This is in as much as there are civil suits which are sub-judice before the Civil Court, details of which are noted above. In this context, it is pertinent to refer to the order dated 20 January 2022 passed under Exhibit 5 in RCS No. 27/2022 where the Trial Court as observed as under :-

“10. It is prima facie brought on record that the Dhule Municipal Corporation has executed the registered agreement in favour of defendant no. 1 regarding the suit property. Moreover, defendant no. 1, is prima facie in possession of the suit property vide the consent deed dated 10/02/2020. In these circumstances, it is not feasible to grant an ad-interim ex-parte injunction against defendants.”

8. Thus, it is clear that there was no protection given to the wife of the Informant who was the Plaintiff in these proceedings. *Prima facie* there is a categorical finding that the suit property i.e. the said shop is in possession of the present Applicant vide Consent Deed dated 20 February 2020. Such facts are not disputed by the prosecution. As far as criminal antecedents are concerned, it is trite law that the Court ought to examine this in the context of the *sine qua non* of a *prima facie* case. The issue of criminal antecedents cannot be applied as a straight jacket formula. It would have to be

considered in the backdrop of the facts and circumstances of each case. In this context, the learned Advocate for the Applicant would submit that as far as C.R. No. 355/2022 as pointed out by the learned APP is concerned, the Applicant has obtained clean acquittal. As far as C.R. No. 86/2022 is concerned, he would draw attention of the Court to the order dated 26 July 2023 in ABA No. 1084/2023 which has been allowed in favour of the present Informant i.e. Nilesh. Thus, there is substance in the contention of the learned Advocate for the Applicant that these aspects equally have to be taken into consideration as far as the submissions of criminal antecedents are concerned.

9. The learned APP would also fairly submit that out of the recovery of Rs. 27 Lacs of the alleged stolen articles, almost Rs. 15 Lacs have been recovered. Considering the above facts and circumstances and the matter in its holistic perspective, *prima facie*, as the said shop which is also subject matter of pending civil proceedings, is in the possession of this Applicant, where theft is alleged, the ingredients of alleged offences in the FIR are not forthcoming, at this stage. Thus, a *prima facie* case is made out by the Applicant. In my opinion, the given factual complexion does not warrant custodial interrogation of the Applicant is not necessary. The Application deserves to be allowed. In my view, the following order would meet the ends of justice.

ORDER

- (i) In the event of arrest of the applicant Nilesh s/o Pandurang Haral, in connection with C.R. No. 106/2025, registered with Dhule (City) Police Station, Dist. Dhule, for the offences punishable under Sections 305, 331(3), 331(4), 3(5) of the BNS, the applicant is

directed to be released on bail on furnishing PR bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand Only) each with one solvent surety in the like amount.

(ii) The applicant shall attend the concerned Police Station on every Monday at 11.30 am. He is further directed to co-operate the investigation.

(iii) The applicant shall furnish details of residential address and other contact details such as the mobile number etc. to the concerned police station. If there is any change in the contact details, the same shall be immediately informed to the concerned police station.

(iv) The applicant shall not leave the jurisdiction of the Court without prior permission of the Court, until further orders.

(v) He shall not contact and/or influence the witness/es and/or tamper with the evidence in any manner whatsoever.

10. The Anticipatory Bail Application is allowed in above terms.

11. Needless to mentioned that the observations are *prima facie* and restricted to the adjudication of this Application.

(ADVAIT M. SETHNA, J.)