IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

971 ANTICIPATORY BAIL APPLICATION NO. 1025 OF 2025

Sunil Suryakant Rathod
VERSUS
The State Of Maharashtra
…..
Mr Arun S. Lomte, Advocate for Applicant.
Mr A. M. Phule, APP for respondent/State.
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CORAM : ADVAIT M. SETHNA, J.

DATE : 06 AUGUST 2025

P. C. :

1. This Application was heard by this Court on few occasions in the past. Notice was issued by an order dated 27 June 2025. Thereafter, by the last order of 5 August 2025, the Court, on again hearing the parties, expressed a *prima facie* opinion, pursuant to which the Court is called upon to pass appropriate orders.

2. The present proceedings relate to Crime No.0159 of 2025 registered by the Pathari Police Station, Dist. Parbhani. The FIR was lodged on 01 April 2025 at 17:43 hours. The alleged offence is under Section 420 of the Indian Penal Code, 1860 (“IPC” for short) and the date of occurrence of the offence is shown on 21 April 2024, in respect of which the information was received at the concerned Police Station

on 1 April 2025 at 17:17 hours, after which the said FIR was lodged. As noted in the FIR, there is only one accused person i.e. Sunil Suryakant Rathod, who is present Applicant before the Court. The informant is one Gopinath Rahu Rathod, aged 72 years, who is a retired teacher.

3. To appreciate the factual matrix, it would be necessary to set out the the contents of the FIR as under :-

The informant is 72 years old retired teacher, having four daughters and one son, who is employee in the Police Force at Delhi. He resides with his wife in the village and is having his house at Pathari and he mortgaged that house for the marriage of his grand daughter. In order to redeem that mortgage of the said house, his son had given the informant cash of Rs.10,00,000/- in the year 2023. On 15 April 2024, the Informant alongwith his nephew i.e. present Applicant went to Maharashtra Gramin Bank, Branch Pathari and deposited amount of Rs.10,00,000/- in his account with the said Bank. After he deposited the amount, the bank issued him an ATM Card in an envelope. The Applicant set the PIN Number of that ATM Card as 2089 and at that time, the Applicant put the ATM Card of State Bank of India in the name of one Ganesh Nagare in the same envelope, in which the ATM Card was given to the Informant. The Applicant gave that envelope containing that ATM card of SBI Bank in the name of the said Ganesh Nagare to the Informant and the accused kept with him the new ATM Card of the Informant.

On 16 April 2024, on the instruction of the Informant, the Applicant transferred through RTGS amount of Rs.40,000/- in the name of the Informant's daughter-in-law, namely, Sunita Prakash Rathod. Thereafter, different amounts on different dates were deposited and transferred to at the instructions of the Informant by the present Applicant, from the account of the Informant in the said Bank. When the Informant was trying to withdraw the amount from the Bank, at that time, he realized that he had no amount in his bank account. The Informant told the bank employees that he had Rs. 10 to 11 Lakhs in his account which was not there. At that time, the bank employees informed him that he had withdrawn the amounts through ATM Card. Thereafter, the Informant and the Applicant came back to the house, checked the envelope and saw the ATM Card which was there in the envelope. At that time, the Informant realized that the ATM Card was not of Maharashtra Gramin Bank where he had his account, but was of SBI Bank issued in the name of one Ganesh Nagare. Thereafter, the Informant visited his Branch and from the statement of accounts of his ATM transactions, it was disclosed the last transactions through ATM Card was done on 27 February 2025 at Sonpeth in Vaijnath Sahakari Bank and an amount of Rs.1,000/- was withdrawn. Thereafter, the Informant alongwith his another nephew one Bandu Haribhau Rathod, with the help of the Police saw the CCTV footage of ATM transaction where the Applicant was clearly seen withdrawing the amounts. In such circumstances, the Informant lodged the complaint that from 21 April 2024 to 27 February 2025, the Applicant misappropriated his account by withdrawing a total sum of Rs.11,90,000/- (Eleven Lakh Ninety Thousand) in his absence, thus cheating the Informant, pursuant to which, the complaint was reported and the FIR was lodged.

4. The Applicant would contend that he is falsely implicated in the said offence, with which he has no connection. There is nothing to show as to how the Applicant received the amount of Rs.11,90,000/-, allegedly belonging to the Informant. The Informant is trying to falsely roping the Applicant due to some family dispute between them.

5. A bare perusal of the complaint and the FIR would reveal that the manner in which the amounts have been withdrawn by the

Applicant from the account of the Informant with the Maharashtra Gramin Bank by misusing his ATM Card on a number of occasions, is clear as crystal. The CCTV footage as contended by learned APP Mr Phule, would clearly indicate that the Applicant is seen withdrawing such amounts. There is no reason to disbelieve this even at the preliminary stage. The Applicant was all the time with the Informant and was undertaking monetary transaction on the instructions of the Informant who reposed faith in his nephew i.e. the Applicant in entrusting such responsibility on the Applicant. However, the Applicant has clearly breached the trust of the Informant taking advantage of his old age by surreptitiously changing the ATM Card to that of another Bank, not disclosing this to the Informant and went on withdrawing amounts from the Informant’s account, completely behind his back. This continued until the Informant realized that his hard earned money in the said account which was predominantly to use to redeem the mortgage of his house, given by his son was totally wiped off.

6. As rightly submitted by the prosecution through the learned APP Mr Phule, this is a clear case of cheating from inception as the Applicant right from the word go had the complete knowledge

that wrongful loss would be caused to the Informant and wrongful gain to the Applicant. It is apparent that the Applicant dishonestly induced the vulnerable Informant to deliver the property thereby attracting Section 420 of the IPC. It was by misusing the said ATM Card of the Informant in the possession of the Applicant which was used to withdraw the amount time and again by the Applicant from the Informant's bank account on various occasions, to the tune of Rs.11,90,000/-, reducing the balance in the said account to almost nil. This is how the Applicant with a clear intent systematically cheated the Informant taking advantage of his old age, their relations, breaching the trust reposed in him by the Informant.

7. Mr Phule, learned APP whilst relying on case diary/investigation papers, would urge that the Applicant has a criminal history. In this regard, he would submit that there is an FIR in Crime No.0583/2024 registered by the Pathari Police Station, Dist. Parbhani under Sections 118(1), 115(2), 352, 189(2), 191(2) and 190 of the Bharatiya Nyaya Sanhita. It appears that this crucial fact is not disclosed by the Applicant in his Application, which under the judgments of the Supreme Court in **Munnesh Vs. State of Uttar Pradesh** (Special Leave Petition (Cri.) No.1400/2025, dated 03 April

2025) and **Kaushal Singh Vs. State of Rajasthan** (Special Leave Petition (Cri.) No.2254/2025, dated 18 July 2025) is now mandated. Thus, Mr Phule would be justified in urging that in the peculiar facts and circumstances of the present case, the Applicant should not be granted an extraordinary relief of anticipatory bail which is an exception and not the rule.

8. Considering the above, applying the parameters by the Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C. K. and Another**, **AIR (2022) SCC OnLine SC 1529,** a clear *prima facie* is made out against the Applicant, which is considered to be *sine qua non* in the adjudication of ABA. Not just this, but as held by the Supreme Court in the case of **C.B.I. Vs. Anil Sharma, 1997 AIR SC 3806**, physical custody of the Applicant in the given factual complexion would be necessary, so as to elicit the complete information known solely to the Applicant and thereby take the investigation to its logical conclusion. Also, the prosecution would submit that this Applicant has attempted to flee from justice. Accordingly, the Court passes the following order :-

ORDER

Anticipatory Bail Application No.1025 of 2025 is **Rejected**.

9. The observations above are *prima facie* for the purposes of adjudicating this ABA.

[ADVAIT M. SETHNA, J.]

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