



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

ANTICIPATORY BAIL APPLICATION NO. 274/2025

SHIVSHANKAR BALWANT GHATE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO. 131/2025**

ZAKIRHUSSAIN ALLABAKSHA NAIKWADI ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO. 132/2025**

ANAND VASANT KSHIRSAGAR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO. 143/2025**

SHRIKANT BASANNA KHANAPURE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Kishor Ajetrao a/w. Adv. Amol Hunge (through VC) for the
applicant in ABA/274/2025.

Mr. Jaydeep Mane for the applicants in ABA – 131/2025, 132/2025,
143/2025.

Mr. Nitin B. Patil, APP for the State in all ABAs.

CORAM : RAJESH S. PATIL, J.

DATE : FEBRUARY 12, 2025.

P.C. :

ANTICIPATORY BAIL APPLICATION NO. 274/2025:-

- 1.** After the matter was argued for some time, the learned counsel appearing for the applicant seeks leave to withdraw this application.
- 2.** The application is disposed of as withdrawn.

**ANTICIPATORY BAIL APPLICATION NO. 131/2025 WITH
ANTICIPATORY BAIL APPLICATION NO. 132/2025 WITH
ANTICIPATORY BAIL APPLICATION NO. 143/2025 :-**

- 3.** These applications are filed for seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 in connection with the First Information Report (FIR) No. 627/2024 registered with the Sadar Bazaar Police Station, Solapur City, Solapur, for the offence punishable under Sections 408, 419, 420, 466, 468, 469, 471, 473, 476 read with 34 of the Indian Penal Code and under Sections 8 and 9 of the Maharashtra Public Records Act, 2005.
- 4.** It is the case of the applicants that the only allegation against them is that they have accepted off-line proposals for sanctioning when the Corporation had started the process of accepting only online proposal. It is submitted that either the proposals were before the datum line 1/1/2022 and as there was a G.R. of the Government all proposals could have been even accepted offline. It is submitted

that three applicants were compulsorily made to retire by the Corporation. There is a delay in lodging the FIR. Apart from the applicants, there were other employees of the Corporation who were similarly placed like the present applicants viz. Lokhande, Tavagonde and others against whom the Corporation has not taken any action. Even though the three applicants were made to compulsory retire, their retirement benefits have not been entirely paid as of date. The applicant Shrikant Khanapure worked in the Building Proposal Department from 1/1/2015 to 27/6/2022. The applicant Anand Kshirsagar worked in the Department from 2017 up till now. Ghate worked from 1/12/2020 to 27/9/2022. The applicant Zakirhussain Naikwadi worked in the Town Planning Department from 1/12/2020 to 16/5/2022.

5. Ultimately, the Corporation has found them guilty, as regards the irregularities. Without admitting and for the sake of argument, if it is considered to be true even then these are mere irregularities which can be always regularized. The applicants have already been fined by the Corporation for a sum of Rs.1 lakh each, therefore, further punishment is not required.

6. The learned APP on behalf of the State submitted that a total

cheating as of now appears to be more than Rs.2,10,00,000/-. The statements have been recorded as of now for 39 proposals. The cheating is likely to be played in many more such proposals. The statements of 16 persons have already been recorded, they are employees of the Corporation and also private engineers who have filed complaint against the present applicants on behalf of the parties who have applied for seeking permission for construction. Therefore, the present anticipatory bail application should be rejected as the custody of the present applicants would be required in order to find out how such proposals up till now have been illegally sanctioned by the present applicants.

7. All the three applicants are the employees of the Corporation working in Town Planning/Building Proposal Department of the Corporation and are directly entrusted with the work of sanctioning development permission. Out of four accused persons, three are the engineers working in Town Planning/Building Proposal Department and the applicant Anand Kshirsagar is a clerk working in the Town Planning Department. The three engineers are no more working with the Corporation as there was the Departmental Enquiry against them where they were found guilty and they have voluntarily retired from the Corporation.

8. The allegations made by the informant (the Commissioner of the Corporation) is that in around 96 proposals, the present applicants have committed irregularities and have sanctioned the proposals,

- (a) granting more FSI than permissible limits;
- (b) Considering the off line proposals, when as per new rules of proposals were to be made online;
- (c) not informing the Tax Department of the Corporation about sanctioning of the proposals, hence, the Corporation suffered losses.

9. The applicant Ghate and the applicant Shrikant Kharapure were the Junior Engineers who were supposed to be on the field and after inspection to make recommendation for sanctioning the files for development. The applicant Zakirhussain Naikwadi was the Assistant Engineer who used to sign after the Junior Engineer had cleared the file. The applicant Anand Kshirsagar was a clerk who used to purposely with intention to play fraud keep blanks in the register of the Corporation. The applicant Ghate has chosen to withdraw his anticipatory bail application.

10. The learned APP has submitted that the fraud/cheating as of today is amounting to Rs.2,20,00,000/-. The statements of 16

witnesses have already been recorded who are the employees of the Corporation and Engineers of various private parties who had applied for sanction of their proposal for development. All of them have pointed fingers towards the present applicants. In the Departmental Enquiry, the applicants have been found guilty and they have been imposed fine of Rs.1,00,000/- each. The outward register file has been destroyed by the applicants as informed by the staff. The investigating officer has been investigating the matter and up till now they have recorded the statements for 39 proposals and many such proposals according to the learned APP are likely to come forward where fraud has been committed by the present applicants.

11. The Supreme Court in case of *Sumitha Pradeep vs. Arun Kumar C.K. and another*¹ in paragraph 12 has held as under :-

“..... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up

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against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

(Emphasis supplied)

12. Therefore, it is not necessary that in every case just because the custody is not necessary, the anticipatory bail application should be allowed.

13. In the present matter, taking into consideration the role played by all the three applicants whereby a grave loss has been incurred by the Corporation as the FSI has been increased by the present applicants, even when they were not holding their posts in the Town Planning/Building Proposal Department proves that they had intention to play fraud on the Corporation. The Corporation has lost a big revenue by the fraud played by all the four applicants. In further enquiry if it is found that there is violation of FSI condition, all the proposals would be rejected which will further cause loss to the parties whose files have been illegally cleared by the applicants. In this view of the matter, there is no merit in the present anticipatory bail applications. **The same are rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)