

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.609/2025

VISHAL DAGADU MANGADE

...APPLICANT

VS

THE STATE OF MAHARASHTRA

...RESPONDENT

...

Adv. Abhijit Kulkarni a/w Chinmay Patil, Prasad Bade for the Applicant.
Adv. Pallavi Dabholkar, APP for the State.

...

CORAM : RAJESH S. PATIL, J.

DATED : MARCH 19, 2025

ORDER:

1. This is an application filed by the applicant u/s. 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for granting pre- arrest bail in connection with Crime No. 74/2025, registered with Barshi City police station for the offences punishable under Section 3(a), 6(a) of Passport (Entry in to India) Rules 1950, under Section 3(1) of Foreigners Order 1948, under Section 14 of Foreigners Act, 1946, under Section 318(4), 336(3), 338, 3(5) of Bharatiya Nyaya Sanhita, 2023.

2. It is the case of the prosecution that on 16 January 2025 the police personal have informed the Anti Terrorism Wing, Solapur about the Bangaladeshi citizens illegally residing at Pankaj Nagar, Barshi. Therefore, the unit of ATS and ATB and other police staff conducted a raid in the building at Pankaj Nagar, Barshi. They found

four women and two men of Bangladeshi. The said Bangladeshi citizens were not having any valid document with them. On their seizure a mobile handsets and cash amount of Rs.1,41,600/- was found. When they were asked about the names of the person who have help them to reside in town of Barshi, Solapur, they disclosed the names of the accused persons including the name of the present applicant. Accordingly, FIR was lodged.

3. The learned counsel for the applicant submits that there are few antecedents reported against the applicant, there is no document to show the involvement of the applicant in the crime registered against him. It is submitted that the police authority had no document to show that the persons whom they called as Bangladeshi were in fact foreigners. Non having of passports by any person, would not mean that he is a foreigner. Just because there are antecedents against the present applicant, his name has been added by the police in the present crime. Section 2(a) of the Foreigners Act, 1946 defines the word "foreigner." Further Section 7 of the said Act cast a duty on the persons who owns any hotel or any other premises where foreigners are accommodated. It is further submitted that the arrested accused nos. 1 to 6 were not staying in the premises owned by the present applicant. There is no evidence other than self incriminating statement made by accused nos. 1 to 6 indicating the applicant has assisted accused nos. 1 to 6 to stay

illegally in this Country. The prosecution has not presented any independent witness or forensic evidence to show the involvement of the present applicant in the crime. The applicant is ready to co-operate with the investigating officer. The custody of the present applicant is not necessary.

4. The learned APP submits that there are in all 7 antecedents reported against the present applicant including that of the Immoral Traffic (Prevention) Act, 1956 and also the Bombay Prevention of Gambling Act, 1887. There are other offences registered against the present applicant under the Indian Penal Code, 1860. The applicant is not a law abiding person. He has a habit to commit bodily and anti social offences. In the present crime, the offences relating to the security of the country are involved. Therefore, for the purpose of interrogation, the custody of the present applicant is necessary.

5. I have heard counsel for both the sides and with their assistance I have considered the document on record including the report tendered by the APP through the investigating officer.

6. There is no dispute that there are at least 7 antecedents against the present applicant including the offences (a) The Immoral Traffic (Prevention) Act, 1956; (b) The Bombay Prevention of Gambling Act, 1887; (c) Offences punishable under Section 341, 324, 323, 504

and 506 of the Indian Penal Code, 1860. As far as the present crime is concerned, the Anti Terrorism Wing have arrested accused Nos. 1 to 6, who are found to be Bangladeshi Citizens. On *prima facie* inquiry being made by the ATS, they were not having any kind of valid document including that of their Passport, Visa/work permits, to show that they are allowed to stay in this Country. The arrested accused nos. 1 to 6 upon inquiry, have named certain persons who have helped them to stay illegally in this Country. The name of the present applicant has been specifically named by them. Therefore, the crime has been registered under the Passport (Entry in to India) Rules 1950, Foreigners Act, 1946, Foreigners Order 1948 and Bharatiya Nyaya Sanhita, 2023. The physical presence of the applicant for interrogation is necessary for completion of investigation. Moreover, there is a possibility that the applicant pressurizing and threatening the witnesses and likely to tamper with evidence.

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

“12..... 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

1 2022 SCC Online SC 1529

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 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)

8. A similar view has been taken by the Supreme Court in the case of *the C.B.I. vs. Anil Sharma*², in paragraph 4 which reads as under:-

“4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders.”

(Emphasis supplied)

9. Taking into consideration the allegations, the role of the present applicant has specifically mentioned in the FIR. Considering the 7 antecedents reported against the present applicant including that of

2 AIR OnLine 1997 SC 797

the Immoral Traffic (Prevention) Act, 1956 and at least four women, who are Bangaladeshi citizens are arrested in the present crime and taking into consideration the law laid down by the Supreme Court in the judgments referred above, I find no merits in the present anticipatory bail applicant. Hence, **anticipatory bail application stands rejected.**

(RAJESH S. PATIL, J.)