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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CRIMINAL APPELLATE JURISDICTION***

**ANTICIPATORY BAIL APPLICATION NO. 763 OF 2025**

**RIZWANA SIRAJAHAMAD PATHAN & ANR. .... APPLICANTS**

**VERSUS**

**STATE OF MAHARASHTRA ..... RESPONDENT**

Mr.Dushyant Pagare for the Applicants.

Ms.Pallavi N. Dabholkar, A.P.P. for the State.

Mr.Satish Hanumant Kolekar, P.C., Sangli City Police Station, Sangli present.

**CORAM : RAJESH S. PATIL, J.**

**DATE : 15<sup>th</sup> APRIL, 2025**

**P.C. :-**

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No. 357/2024 dated 20<sup>th</sup> July, 2024 registered with Sangli City Police Station, Sangli for the offence punishable under Sections 303(2) of the Bharatiya Nyaya Sanhita, 2023.

2. Based on the complaint, an FIR has been lodged. The role of the present applicants is mentioned in the said FIR.

3. It is submitted on behalf of the applicants that the applicants

had been to Sangli for taking treatment for applicant no.1 from a Vaidya. The punishment for the alleged offence has mentioned in the FIR as maximum three years. Therefore, the custody of the present applicants is not necessary. The applicants have no concern with the said crime. The applicant no.1 is not keeping well and hence she had been to Sangli from her native place at Belgaum. The applicants are ready to co-operate with the Investigation Officer in order to complete the investigation. The custody of the present applicants is not at all necessary.

4. The learned A.P.P. submits that from the CDR, it can be seen that the applicants have been in or about at Sangli S. T. Stand from 19<sup>th</sup> July 2024 to 22<sup>nd</sup> July 2024. The statement of the Vaidya where according to the applicant no.1, she had been to Sangli for taking treatment, also records that the applicants had been to the clinic of the Vaidya in the month of December 2024. The applicant no.1 is not co-operating with the police and is giving vague answers when the Investigating Officer has enquired with her during investigation. There is antecedent against the applicant no.1, similar kind of offence at Belgaum. The recovery of the stolen jewelry has not been done. The worth of the said jewelry is around Rs.4,52,000/-. The custody of

the present applicants is therefore necessary.

5. I have heard learned counsel for both the sides and I have gone through the documents on record.

6. From the Session Court's order, it can be seen that the present applicants has made statement that there are no antecedents. However, today when the learned A.P.P. has made statement that there are criminal antecedents of the present applicant no.1 for similar kind of offence at Belgaum, there was no response from the advocate appearing for the applicant for want of instructions.

7. The Investigating Officer has brought on record while investigating the CDR of the mobile phone of the applicant no.1, which shows that not only on 20<sup>th</sup> July 2024, but from 19<sup>th</sup> July 2024 till 22<sup>nd</sup> July 2024, the applicant no.1 has been in and around the Sangli S.T.Stand. When the applicant no.1 was directed to attend and meet the Investigating Officer during the said attendance before the Investigating Officer, the applicant no.1 has given evasive answers as regards her presence near Sangli S.T. Stand from 19<sup>th</sup> July 2024 to 22<sup>nd</sup> July 2024.

8. As regards, the medical documents of the applicant no.1 is concerned, the applicant no.1 has not produced any medical

document to prove that she had been to Sangli from Belgaum for taking treatment for herself. The statement of the Vaidya (Ayurvedic Doctor) of Sangli was recorded by the Investigating Officer, which stated that the applicant no.1 has never been to his clinic in July 2024 and she was infact in his clinic in December 2024. The FIR was lodged on 20<sup>th</sup> July 2024 and the name of the present applicant came after the CC TV footage was received by the Investigating Officer, during the course of the investigation. *Prima facie* it appears that only to circumvent the said fact, the applicant no.1 purposely went to the clinic of the Vaidya in December 2024, in order to create purported evidence.

9. The recovery of the gold ornaments as of today has not been made. Therefore the custody of the present applicants would be necessary in order to complete the investigation.

10. The Supreme Court in case of ***Sumitha Pradeep vs. Arun Kumar C.K. and another***<sup>1</sup> 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.

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1 (2022) 17 SCC 391

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 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)

11. A similar view has been taken by the Supreme Court in the case of *the C.B.I. vs. Anil Sharma*<sup>2</sup>, 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)

12. Taking into consideration the law laid down by the Supreme Court and the report of the CDR and the fact that no medical certificates have been produced by the applicant no.1 to show that she had been to Sangli from Belgaum only for the purpose of medical treatment, I found no case has been made out against the applicant no.1 for grant of pre-arrest anticipatory bail. Hence, it stands rejected against applicant no.1.

13. The applicant no.2 has always been with the applicant no.1 in Sangli near the S. T. Stand also. Why he is with applicant no.1, has not been disclosed. There is a strong *prima facie* case against applicant no.1 made out by the learned A.P.P. Therefore, according to me, even for the applicant no.2, role in present crime cannot be ruled out. Hence, the present anticipatory bail application stands rejected.

14. **The present anticipatory bail application stands rejected and disposed of accordingly.**

**[RAJESH S. PATIL, J.]**