

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1050 OF 2025

HANUMANT VISHWANATH GAME & ANR. APPLICANTS

VERSUS

STATE OF MAHARASHTRA RESPONDENT

KANCHAN
VINOD
MAYEKAR

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Mr. Viresh V. Purwant a/w. Mr. Suraj V. Gadkari for the Applicants.

Ms. Rutuja A. Ambekar, A.P.P. for the State.

Mr. Amol Mohan Bakal, H.C., Akluj Police Station, Solapur Rural
present.

CORAM : RAJESH S. PATIL, J.

DATE : 25th 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. 185/2025 dated 13th March, 2025 registered with Akluj Police Station, Solapur Rural for the offence punishable under Sections 3(5), 318(4) of the Bharatiya Nyaya Sanhita, 2023.

2. As per the complaint filed, an FIR has been lodged. The role of the present applicants has been mentioned in the said FIR.

3. The present applicant has borrowed a loan in the year 2011

from a bank and mortgaged the land admeasuring 2 hector 87 R and 70 R. The applicant no.2 was a guarantor to the said facility. It is argued before me that since the bank was of the view that there was a default in payment of the loan amount, therefore the bank proceeded to file a suit against the present applicants for recovery of their amount. The said suit was decreed and an appeal against the decree passed against the applicant is pending. Therefore, this is a pure civil transaction arising out of the contract and there is no criminality involved.

4. The correct facts pointed out to me is that before the bank could have sanctioned loan on 18th May, 2010, the major part of the land which was mortgaged for granting loan, was already sold by the applicant no.1 to one Mr. Avinash Jadhav. So also, the applicant no.1 after granting of the subject loan, borrowed another loan of Rs.1,70,000/- by mortgaging the same piece of land from Solapur District Central Co-operative Bank.

5. According to me, the applicant has cheated both the banks, first selling of the land and the land which earlier belonged to him obtaining a loan by not disclosing that more than half portion of the land has already been sold. Subsequently after obtaining the loan

from the bank, applied for another loan from different bank for the same piece of land by not disclosing that he has already mortgaged the subject land. Therefore, the applicant has forged and fabricated the documents in order to obtain two different loans. The said fact has to be enquired in the present crime. Recovery of the bank of its loan amount is a different issue, for which the bank will follow its procedure to recover. We are today concerned only about the crime committed by the present applicants by forging and fabricating the documents to obtain loans from two different banks for the same piece of land. So also, selling of the major portion of the said land before the loan was granted and not disclosing this fact to the banks. The bank monies are after all public monies. Therefore, according to me, for the purpose of completing the investigation, interrogation of the present applicants will be necessary.

6. 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

1 (2022) 17 SCC 391

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)

7. 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)

2 AIR OnLine 1997 SC 797

8. Considering the view taken by the Supreme Court in above judgments and considering the contents of the FIR, the present anticipatory bail application requires to be rejected. Hence, **the present anticipatory bail application stands rejected.**

[RAJESH S. PATIL, J.]