

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 4084 OF 2024**

Siddhartha Shyamal Kumar Roy	]	
Age: 46 years Occ: Business	]	
Residing at Tower 2, 11-D,	]	
Rosedale Garden Apartment Owners	]	
Association, AA-III, New Town,	]	Petitioner.
Kolkata-700 160, West Bengal	]	(Original Accused)

V/s

The State of Maharashtra	]	
Through EOW, Unit-5,	]	
General Cheating-III, Mumbai	]	 Respondent.

Mr. Sanjay Dubbey a/w Ms. Puja Bhatta, advocates for the petitioner.

Mr. J.P. Yagnik, APP for the respondent-State.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 16th DECEMBER 2025.

P.C. :

List of dates and events is tendered in the Court which is taken on record.

2. The petitioner against whom the proclamation under section 82

of the Code of Criminal Procedure has been issued seeks to challenge the entire proceedings arising out of C.R. No.50 of 2023 pertaining to the crime registered with Wadala Police Station vide C.R. No.421 of 2023 for commission of offences punishable under sections 406, 408, 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code.

3. The petitioner states that he is a Chartered Accountant who was working at Ghana with Alliance Motors Ghana Limited (in short, “AMGL”) which is a subsidiary of Tata International Limited. He served the organization for 15 years and in course of his service received several promotions. He stayed in Nigeria and in December 2022 tendered his resignation with the stipulated notice. He ultimately left the office on 31st March 2022 and returned to India after completing all exit formalities. Mr. Sanjay Dubbey, the learned counsel for the petitioner submits that a complaint was made against the petitioner with Ghana Police on 12th June 2023 for embezzlement of funds and fabricating documents but nothing incriminating was found against the petitioner. He received notice from the respondent-Economic Offence Wing on 14th August 2023 and joined investigation on receiving the second notice on 19th August 2023. Further notices were issued by the respondent to the petitioner on 29th August 2023, 31st August 2023 and 4th September 2023 and the petitioner deposited his personal laptop and documents and was allowed to travel to Dubai. After he accepted new assignment on 7th September 2023, a crime vide FIR No.421 of 2023 was registered on 9th September 2023 with Wadala T.T. Police Station and a Look Out Circular (in short, “LOC”) was opened against the petitioner on the same day but without any communication to him. Before a non-bailable warrant (in short, “NBW”) was issued against him on 9th November 2023, he filed

anticipatory bail application in the Sessions Court. He approached this Court in Criminal Writ Petition (St) No.221 of 2024 titled "*Siddhartha Shyamal Kumar Roy v. The State of Maharashtra*" seeking quashing of FIR No.421 of 2023 and this Court issued notice to the respondent no.2 on 27th February 2024.

4. In the background of the aforesaid facts, Mr. Dubbey submits that the proceedings against the petitioner such as LOC, NBW etc were initiated without information to him. The Investigating Officer had knowledge about the petitioner travelling to Dubai but he did not make any intimation to him through e-mail. According to Mr Dubbey, the entire criminal proceedings against the petitioner vide C.R. No.421 of 2023 are at the instance of the complainant due to a personal grudge and to take revenge against the petitioner.

5. After having perused the materials on record, we have formed an opinion that no indulgence can be granted in this writ petition. The petitioner was a director at AGML between 15th December 2018 and 30th March 2022. This is not the law that the accused should be given intimation of opening of the LOC or issuance of the NBW against him. On 12th October 2023, the anticipatory bail application filed by the petitioner was rejected by the Sessions Court. The attempt by the petitioner to seek anticipatory bail from this Court in Anticipatory Bail Application No. 2223 of 2024 failed and the said petition was rejected by the order dated 7th August 2024. In the said order, the learned single Judge of this Court referred to the allegation of embezzlement of Rs. 31.20 crores by the petitioner by fabricating invoices, vouchers and digital records. The order dated 7th August 2024 was challenged by the petitioner in Special Leave to Appeal (Crl.) No.15624 of 2024 which was dismissed as withdrawn on 14th November 2024. It seems

that the petitioner has made another attempt to secure the anticipatory bail by filing Anticipatory Bail Application No.3425 of 2024 which is pending.

6. Chapter VI of the Code of Criminal Procedure deals with the processes to compel appearance. The provisions thereunder provide form of summons, service of summons process when the persons summoned cannot be found etc. Section 82 deals with the proclamation for person absconding. This provides that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time in not less than thirty days from the date of publishing such proclamation. There are certain conditions provided under section 82 for publication of proclamation against the person absconding.

7. The whole case of the petitioner rests on pendency of Anticipatory Bail Application No.3425 of 2024 and Criminal Writ Petition (St) No.221 of 2024. Merely stating that the Investigating Officer had knowledge about his residence is not sufficient to infer that the petitioner had made himself available at all times at his place of residence. There is no statement made in this writ petition that the Investigating Officer never visited the petitioner's place of residence to effect his arrest pursuant to the NBW issued against him on 9th November 2023. Rather, it is recorded in the respondent's affidavit that the then Investigating Officer along with local police went to residential premises of the petitioner on 8th January 2024 to execute the NBW wherein he was not found at the said premises. If this is the

law that mere filing of a case or pendency of cases in the Court can be taken as a ground against issuance of processes against the person absconding, the whole purpose behind the statutory mandate to bring the accused person to the Court would be frustrated. Filing an anticipatory bail through the advocate cannot be said to be an “appearance” which is a requisite under section 82. This position of law has been fortified by the Hon’ble Supreme Court in “*Srikant Upadhyay v. State of Bihar*”, (2024) 12 SCC 382, wherein it is held :

“27. The above-extracted ground taken by the appellant constrains us to consider the question whether there could be any bar on the trial court for proceeding under Section 82 CrPC, merely because an anticipatory application for bail has been filed or because such an application was adjourned without passing any interim order. We may hasten to add here that it is always preferable to pass orders, either way, at the earliest. In the case on hand, application for anticipatory bail was filed by the appellants before the High Court in November 2022 and brought up for hearing on 4-4-2023, on which day it was dismissed as per the impugned order [Srikant Upadhyay v. State of Bihar, 2023 SCC OnLine Pat 9425]. The very ground, extracted above, would reveal that in the meanwhile, proclamation under Section 82 CrPC, was issued on 4-1-2023 and thereafter process under Section 83 CrPC was initiated on 15-3-2023.

*28. There can be no room for raising a contention that when an application is filed for anticipatory bail, it cannot be adjourned without passing an order of interim protection. A bare perusal of Section 438(1) CrPC, would reveal that taking into consideration the factors enumerated thereunder the court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Session, as the case may be, did not pass an interim order under this section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1) CrPC, it cannot be contended that if, at the stage of taking up the matter for consideration, the court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order. This question was considered in detail by a Single Bench of the High Court of Bombay, in the decision in *Shrenik Jayantilal Jain v. State of Maharashtra* [Shrenik Jayantilal Jain v. State of Maharashtra, 2014 SCC OnLine Bom 549] and answered as above and we are in agreement with the view that in such cases, there will be no statutory inhibition for arrest.*

29. Hence, the appellants cannot be heard to contend that the application

for anticipatory bail filed in November 2022 could not have been adjourned without passing interim order. At any rate, the said application was rejected on 4-4-2023 [Srikant Upadhyay v. State of Bihar, 2023 SCC OnLine Pat 9425] . Pending the application for anticipatory bail, in the absence of an interim protection, if a police officer can arrest the accused concerned how can it be contended that the court which issued summons on account of non-obedience to comply with its order for appearance and then issuing warrant of arrest cannot proceed further in terms of the provisions under Section 82 CrPC, merely because of the pendency of an application for anticipatory bail. If the said position is accepted the same would be adopted as a ruse to escape from the impact and consequences of issuance of warrant for arrest and also from the issuance of proclamation under Section 82 CrPC, by filing successive applications for anticipatory bail. In such circumstances, and in the absence of any statutory prohibition and further, taking note of the position of law which enables a police officer to arrest the applicant for anticipatory bail if pending an application for anticipatory bail the matter is adjourned but no interim order was passed. We have no hesitation to answer the question posed for consideration in the negative. In other words, it is made clear that in the absence of any interim order, pendency of an application for anticipatory bail shall not bar the trial court in issuing/proceeding with steps for proclamation and in taking steps under Section 83 CrPC, in accordance with law.”

8. It is not in dispute that notices and NBW were issued by the respondent which the petitioner was aware about. The NBW could not get executed as the petitioner was not found despite inquiries made at his residential address. The Court concerned has applied its mind to the facts of the case and rightly came to the conclusion that it has reason to believe that the petitioner is the person who is avoiding processes of the Court.

9. Writ Petition No.4084 of 2024 lacks merit and, accordingly, dismissed. The petitioner is directed to make himself available to the Investigating Officer or shall surrender before the Court concerned on 19th January 2026 at 10:30 a.m.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]