

Amberkar

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

**ANTICIPATORY BAIL APPLICATION NO. 3325 OF 2024
WITH
INTERIM APPLICATION NO. 91 OF 2025**

Kinjal Kamlesh Desai

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

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- Mr. Rajeev Patil, Senior Advocate a/w Ms. Sonal Parab & Mr. Parth Sanghrajka i/by Rajeev Sawant & Associates for Applicant
- Mr. Sukanta A. Karmakar, APP for State
- Mr. Vishal Gaikwad, API, MIDC Police Station is present

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2025

P. C.:

1. Not on board. In view of the urgency expressed, taken on production board.
2. Heard Mr. Patil, learned Senior Advocate for Applicant and Mr. Karmakar, learned APP for State.
3. There is dichotomy expressed by learned Senior Advocate appearing for Applicant and learned APP. Investigating Officer is present before this Court. There are two orders passed by this Court. First order is dated 09.12.2024 (Coram : R.N. Laddha, J.) which reads thus:-

". *Heard.*

2. *The learned Counsel for the applicant submits that the applicant and the informant are of legal age and their relations were consensual in nature. The alleged incident occurred on 14 September 2023, and the FIR was lodged on 15 November 2024. There is substantial delay in lodging the FIR.*

3. *Mr Shafi Sayed, the learned counsel representing respondent No. 2, seeks time to file a reply affidavit. The learned APP also seeks time to take instructions, as the investigating officer is not present, and assures the Court that the applicant will not be arrested in the present crime till the next date.*

4. *By consent, stand over to 10 January, 2025."*

4. The matter was mentioned on 10.01.2025 before this Court at the time of rising by Advocate for complainant as it did not reach hearing during the Court working hours (04:30 p.m.) but considering the present assignment on all dates this Court has been sitting a little beyond the working hours and taking up matters which do not reach on that particular date to consider the exigency expressed in the matters so that Advocates do not have to give a fresh praecipe for urgent listing on the next day. Investigating Officer of MIDC Police Station, Mumbai was present before this Court on that date. After hearing the learned APP and learned Advocate for intervenor and Investigating Officer, this Court passed the following order on 10.01.2025:-

"1. *Heard Mr. Karmakar, learned APP for Respondent No.1 – State of Maharashtra and Mr. Kelwadi, learned Advocate for Intervenor.*

2. *At the time of rising, Mr. Kelwadi, learned Advocate for Complainant has persuaded me to hear Anticipatory Bail Application No.3325 of 2024 and sought indulgence of the Court. He would draw my attention to the order dated 09.12.2024 and would submit that the statement was made in*

the absence of Investigating Officer that the Applicant would not be arrested on that date. Today, Investigating Officer is present in Court before me when I have taken the matter for hearing. Since, it is called out at the time of rising, Advocate for Applicant is not present. I can give him benefit of doubt for not being present.

3. *The Investigating Officer has categorically stated and informed the Court in the presence of the learned APP that he has called the Applicant after the last order and asked him to give details of the photographs and videos of the Complainant but he has not co-operated with the Investigating Officer. This is a shocking thing. Applicant should note that no ad-interim relief has been granted by this Court. Considering the facts of the matter, this is a serious issue. Applicant shall take note of this matter and if he has not co-operated he shall immediately do so. Copy of this order shall be served on Applicant's Advocate immediately by the Advocate for Complainant. I am listing the matter next week when I expect the Applicant to remain present in Court.*

4. *Stand over to 17th January, 2025."*

5. Today morning Ms. Parab, learned Advocate for Applicant mentioned the matter and insisted this Court to list the matter on Production Board in view of the extreme urgency expressed by her. It was informed to Court that Applicant in the matter was arrested yesterday despite the order passed on 09.12.2024 which was brought to the notice of the Court. At this stage, I need to add that it was the duty of the learned Advocate for Applicant to have also brought to my notice the order passed on 10.01.2025 which was not brought to my notice. Lot of time was unnecessarily wasted by the learned Advocate for Applicant in the morning session despite the Court assuring her that if there was an extreme urgency this Court always considered the same and would list it on production board. Be that as it may, the issue before me is the fact that when the matter has now been placed on production board and has been called out, I am informed by

learned APP that Applicant has been arrested yesterday and today he is granted police custody till 18.01.2025 by the Magistrate's Court. After perusing both the aforesaid orders, either the Applicant is right in his contention that he has co-operated with the Investigating Officer or the Investigating Officer is right in his contention that Applicant has not co-operated. Mr. Patil would persuade me to see the details given by the Applicant to show his co-operation of handing over the photos and videos to the Investigating Officer. He would submit that Applicant was in a meeting yesterday and he was arrested. That will be considered by the Court later on. Today the urgency expressed by Applicant deserves to be redressed by Court since he was arrested yesterday. Present Application filed before me is an 'Anticipatory Bail Application'. It is seen that Applicant has agreed to co-operate with the Investigating Officer and hand over all photographs and videos including his mobile phone. However since he has been arrested and granted police custody, learned Senior Advocate Mr. Patil has persuaded me to consider his case. Hence I am inclined to grant leave to Applicant to convert the present Anticipatory Bail Application into a Regular Bail Application. Amendment is permitted to be carried out by tomorrow in the Registry. Re-verification stands dispensed with. Registry shall number the present Application as Regular Bail Application accordingly on the basis of this order. Considering the

urgency expressed in the matter and the fact noted in the order dated 09.12.2024 (Coram: R.N. Laddha, J.) about the Applicant agreeing to extend co-operation with the Investigating Officer, I am inclined to grant immediate bail to the Applicant. This is only in order to ensure that the liberty of the Applicant before me is not curtailed and more specifically in view of the fact that my predecessor on 09.12.2024 had clearly applied his mind while passing the said order but equally it was also the duty of the Advocate for Applicant to ensure that until the Court had risen on 10.01.2025 they should have remained present in Court. Further even thereafter, they could have moved this Court for varying the order dated 10.01.2025 from 11.01.2025 to 14.01.2025 and informed the Court about Applicant's co-operation. It is only when Applicant was arrested, this Court is now moved. Only because of the personal liberty of the Applicant being curtailed and he agreeing to co-operate, I am passing this order of granting bail to him. Be that as it may, I am inclined to immediately order release of the Applicant on interim bail from police custody by passing the following order:-

- (i) The concerned Police Station / In-charge of the concerned Police Station where the Applicant is in police custody shall take cognizance of a server copy of this order and release the Applicant immediately on interim bail on following terms and conditions;

- (ii) Learned APP shall convey this order to the concerned Police Station Incharge for compliance;
- (iii) Applicant is directed to be released on bail on furnishing cash bail of Rs. 25,000/- for his release and file his undertaking that he will provide one or two sureties in the like amount of Rs. 25,000/- within a period of four weeks after his release from police custody, which shall be accepted;
- (iv) Applicant shall report to the Investigating Officer of concerned Police Station initially for three days beginning from tomorrow i.e. 16.01.2025 between 02:00 p.m. to 05:00 p.m. for medical examination and providing all information, co-operation with investigation and thereafter as and when called out;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) He shall deposit his passport, if any, with the Investigating Officer;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

(viii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(ix) Any infraction of the above conditions shall entail revocation of this order.

6. Learned Senior Advocate for Applicant would submit that he has already submitted the documents / material pursuant to the order dated 09.12.2024 to the Investigating Officer. The said documents / material shall be given once again to the Investigating Officer. Applicant shall ensure that all photographs and videos and his mobile phone be handed over to the Investigating Officer and he shall attend the investigation before the Investigation Officer as directed.

7. If Applicant is required to go for medical examination, Investigating Officer shall facilitate the same and he shall attend the same.

8. All concerned shall act on production of a server copy of this order and no authority shall insist on a certified copy of this order.

9. List the matter on **20th January, 2025** for compliance so that after carrying out the appropriate amendment in the matter as per this

order, further order shall be passed in the Bail Application. To be listed under the caption "**First on Board**".

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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