Shabnoor

SHABNOOR AYUB PATHAN
Digitally signed by SHABNOOR AYUB PATHAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.303 OF 2025

Abhishek Ashok Patil … Applicant

V/s.

The State of Maharashtra … Respondent

Mr. Ashok M. Saraogi for the applicant.

Mrs. Shilpa G. Talhar, APP for the State – respondent.

Mr. Rajkumar Mundhe, PSI, Wada Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2025

P.C.:

1. From the record placed before this Court, it is noticed that the application submitted by the present applicant was titled as an Anticipatory Bail Application. The learned Sessions Judge has also proceeded to consider it on the footing that it was indeed an application for anticipatory bail. However, on going through the record, it is evident that the applicant had already been arrested in connection with the alleged offence punishable under Section 118(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Once the applicant has been taken into custody, the legal position is well settled that an application for anticipatory bail does not survive, as such relief is meant only for a person who apprehends arrest. In the present case, the proper recourse available to the

applicant after arrest is to invoke Section 483 of the BNSS, which specifically provides for seeking regular bail after a person is taken into custody.

2. In this backdrop, the application styled as one under Section 438 of the Code could not have been entertained as such, and the applicant must move an application under the correct provision of law. Needless to say, when a statute prescribes a specific remedy, the Court is bound to follow the procedure so laid down. It is equally well settled that wrong labeling of an application cannot by itself defeat the rights of a party, but the application must be tested with reference to the proper statutory provision. Hence, liberty deserves to be granted to the applicant to file an appropriate application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

3. It is clarified that if and when such an application is filed, the learned Trial Court shall decide the same in accordance with law and on its own merits, without being influenced by any observations contained in the earlier order dated 10th July 2025.

4. The present application stands disposed of.

(AMIT BORKAR, J.)