



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

ANTICIPATORY BAIL APPLICATION NO. 88/2025

SHIVAJI @ BANDU BHAU BHOSALE ..APPLICANT
VS.
STATE OF MAHARASHTRA ..RESPONDENT

Adv. Ritesh Thobde a/w. Adv. Ankita Rai, Adv. Zubi Ansari, Adv.
Changdev Shingade, Adv. Heanike Vyas for applicant.
Mr. A. S. Shalgaonkar, APP for State.
HC 459, N. M. Devkate, Pandharpur City Police Station.

CORAM : RAJESH S. PATIL, J.

DATE : APRIL 17, 2025.

P.C. :

1. This application is filed under Section 482 of the Bhartiya
Nagarik Suraksha Sanhita, 2023 for seeking pre-arrest bail in
connection with the First Information Report (FIR) No. 708/2024
registered with the Pandharpur City Police Station, for the offence
punishable under Sections 318(1), 318(4), 336(1), 336(3), 340(2),
3(5) of the Bhartiya Nyaya Sanhita, 2023.

2. On the basis of the complaint, an FIR has been filed. The name
of the present applicant, after recording of the statement of the co-
accused has been arraigned as accused no.7. The pre-arrest bail

application filed before the Sessions Court was rejected on 1/1/2025, thereafter, the present pre-arrest bail application is filed.

3. It is argued on behalf of the applicant that the name of the present applicant is not mentioned in the FIR. Subsequently, after remand, the statement of the co-accused has been recorded and the name of the present applicant has been arraigned in the crime. The offence as mentioned in the FIR are triable by the Magistrate. The charge-sheet has already been filed against the arrested accused and under Section 299 against the present applicant. The applicant was the real estate agent who received 2% commission from the arrested accused no.1. The present applicant has no role to play in the crime. He is neither the signatory to both the agreements of sale nor he is witness to the said sale agreements. The applicant is ready to cooperate with the investigation agency. The custody of the present applicant is not necessary.

4. The learned APP on behalf of the State submitted that there is one more offence registered against the present applicant under Section 420 of the IPC. Even in the said crime the present applicant is shown as absconding. In the present proceeding as of today the present applicant is shown as absconding. Accused no.1 and accused

no.10 have already been arrested and are behind bars. Accused no.1 and accused no.10 are both females. Accused no.2, accused no.3, accused no.8, accused no.9 are absconding as per the records of the police.

5. The present applicant admittedly is into the profession of a commission agent. For the subject dealing, he admittedly has received commission and even in the present proceeding he received commission from arrested accused no.1. As per the investigating agency, accused no.10 is the mastermind behind the crime. The subject land belonged to the informant lady. As per the FIR, as the informant was not residing near to the subject land, the accused took advantage of the same, and they impersonated the informant by accused no.8 being shown as if she is the informant and through him, it has been shown that the subject land belonging to the informant is being sold to accused no.1. Then within a period of one and half months the land was further sold by accused no.1 to accused no.4. A five storeyed building is being constructed on the subject land without the knowledge of the informant. When the informant got the knowledge of the said fact, she lodged the FIR. Accused no.5 and accused no.6 are the witnesses to the second agreement between accused no.1 and accused no.4. They had applied for regular bail and

this Court had granted protection to them. So also, accused no.4 being the purchaser of the subject land from accused no.1, has been granted protection by this Court under regular bail application on the ground that he is a purchaser for a value without notice.

6. I have heard the learned counsel for the applicant and the learned APP for the State. I have also gone through the FIR and the documents on record.

7. The learned APP submitted that the IO has obtained CDR report of the conversation between the present applicant and accused no.1, so also, the present applicant and accused no.10. The said conversation records that the present applicant directed accused no.1 to run away. However, accused no.1 has been arrested by the police, and he is behind bars. It is also the conversation between the present applicant and accused no.10. Accused no.10, according to the IO is the mastermind behind the crime. The co-accused no.8 who is absconding has named the present applicant as the person who has major role to play in the crime.

8. Considering the fact that the CDR report shows that the present applicant had insisted accused no.1 to run away. So also, he was in continuous contact with accused no.1 and accused no.10

shows that he was involved majorly in committing the crime. The crime is of a serious nature as the informant has been impersonated, and her land is shown to be sold by accused no.8 in favour of accused no.1. Accused no.1 has already been arrested, and he is behind bars. Thereafter, within a period of one and half month, the land has been sold to accused no.4 by accused no.1 who is the builder/developer by profession. On the said piece of land as of today a building of five storeyed has been constructed without the knowledge and permission of the original owner of the land i.e. the complainant.

9. Taking into consideration the fact that the present applicant has received the commission from the arrested accused no.1 and there is one more crime registered against the present applicant under Section 420 of the IPC. In the said crime, the present applicant is shown as absconded. According to me, no case is made out to grant any protection to the present applicant.

10. The Supreme Court in case of *Sumitha Pradeep vs. Arun Kumar C.K. and another*¹ in paragraph 12 has held as under :-

“12..... 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

1 (2022) 17 SCC 391

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*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)

12. The applicant has relied upon the order passed by the Supreme Court in the case of *Krishna Damani versus State of West Bengal in Criminal Appeal No (S). 2743 of 2024 arising out of S.L.P (Criminal)*

2 AIR OnLine 1997 SC 797

No (S). 6954/2024. According to me, in the said order the entire facts involved in the subject crime has not been mentioned, and there is an observation made that there is no dispute about the offence triable by the Magistrate Court, therefore, there is no reason to deny bail. This order relied on by the applicant of the Supreme Court in *Krishan Damani* (supra), would not be helpful to the present applicant since it is only an order and not a judgment. Choosing one paragraph from the said order could not be helpful in the present proceeding.

13. Taking into consideration the gravity of the offence committed by the present applicant, the contents of the FIR and the documents produced before me and the law laid down by the Supreme Court in the above referred judgments of *Sumitha Pradeep* (supra) and *Anil Sharma* (supra), the physical presence of the applicant for interrogation is necessary for the completion of the investigation. Moreover, the possibility of pressurizing and threatening witnesses and tampering with the evidence cannot be ruled out. **The anticipatory bail application of the applicant stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)