

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 255 OF 2025

Brijmohan C. Gupta
V/s.

...Applicant

1. The State of Maharashtra
2. Rajeev M. Gupta

...Respondents.

.....
Mr. M.M. Vashi, Sr. Advocate a/w. Adv. Panthi Desai i/b M.P. Vashi & Associates for the Applicant.

Mrs. G.P. Mulekar, APP for the Respondent/State.

Mr. Niteen Pradhan i/b Ms Mallika Ingale for Respondent No.2.
PI Sachin Saste is present.

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CORAM : N.R. BORKAR, J.
DATE : 12.02.2025.

P.C. :

1. This is an application for anticipatory bail.
2. The applicant is apprehending his arrest in Crime No.735 of 2024 registered at Borivali Police Station, Brihan Mumbai for the offences punishable under Sections 3(5), 318(2), 318(3), 336(2) and 336(3) of the Bharatiya Nyaya Sanhita, 2023 (BNS).
3. According to the complainant, his father, present applicant, who is brother of his father and their other three brothers were members of Hindu Joint family. According to him, in the year 1995 they decided to enter into real estate business. According to the complainant, the co-accused Suresh Shroff, who was in real estate business used to come to their house as he was the friend of the

applicant. It is alleged that said co-accused Suresh Shroff suggested them to buy the land in the name of his company M/s.Shroff Consultant Private Limited so that it will be easier for him to get necessary approval from concerned authorities for their real estate business and in turn he agreed to transfer 75% of shares of his company in the name of their joint family. It is alleged that pursuant to said understanding out of joint family funds, land bearing survey No. 482 ad-measuring 8591 sq.mt., now bearing C.T.S. No.230, 231 and 232, at Malad (W), Mumbai was purchased in the name of M/s. Shroff Consultant Private Limited. According to the complainant, after purchase of the said land, he, his cousin Vicky Gupta and the present applicant were made Directors of M/s. Shroff Consultant Private Limited. According to the complainant, though 75% of the shares of the company were transferred in the name of the present applicant, however, according to the complainant they were transferred in the name of the applicant as a representative of the joint family.

4. Be that as it may, the allegations are of preparing forged Memorandum of Understanding (MOU) by the present applicant and co-accused Suresh Shroff. According to the complainant, from 1995 to 2016 there was no progress in the project and when they inquired with the co-accused Suresh Shroff, he told them the reason of insufficient fund. According to the complainant, in the year 2017, co-accused Suresh Shroff came to their house and he told them that to execute the project they will have to search some new developer and for that purpose they will have to resign

as Directors and surrender their 75% shares in his favour. According to the complainant, in consideration of surrender of 75% of their shares, co-accused Suresh Shroff agreed to allot them 28,000 sq. ft saleable carpet area in the sale component and as a token of security agreed to give allotment letters. According to the complainant, they accepted the said proposal of co-accused Suresh Shroff. It is alleged that MOU to that effect was executed. It is alleged that after execution of the said MOU, the present applicant and other co-accused had prepared another forged MOU and the clause, by which certain rights were created in favour of their joint family was deleted. It is further alleged that the applicant and other co-accused had thereafter sold the flats, which were allotted to them, to third parties.

5. I have heard the learned senior advocate appearing for the applicant, the learned APP for the respondent / State and the learned advocate appearing for the respondent No.2.

6. According to the learned senior counsel for the applicant one of the terms was inadvertently remained to be incorporated when the first MOU was executed and thus second MOU incorporating the said term was executed. It is submitted that there arise no question of forgery as the said MOU/s are between the applicant and co-accused Suresh Shroff. It is submitted that even otherwise it's a purely civil dispute.

7. On the other hand, learned App for the respondent/State and the learned counsel for the respondent/complainant submit that

admittedly, the second MOU does not contain one of the clause which was there in the first MOU. It is submitted that considering the nature of offence, the applicant may not be released on anticipatory bail.

8. I have perused the relevant documents produced on record. *Prima facie*, there is a substance in the submission of the learned senior counsel for the applicant that the dispute between the parties is of civil nature. In that view of the matter, I am inclined to release the applicant on anticipatory bail. In the result the following order is passed.

ORDER

- A) The Application is allowed.
- B) In the event of arrest of the applicant in C.R. No. 735 of 2024 registered at Borivali Police Station, Brihan Mumbai for the offences punishable under Sections 3(5), 318(2), 318(3), 336(2) and 336(3) of the Bharatiya Nyaya Sanhita, 2023, he shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- C) The applicant shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate in the investigation.

[N.R.BORKAR, J.]