



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 326/2025

KHUSHAL BHANUDAS TAPKIR

..APPLICANT

VS

STATE OF MAHARASHTRA

..RESPONDENT

Senior Advocate Sudeep Pasbola a/w. Mr. Kishan Chaudhari, Mr. R. R. Cahuhan, Mr. Uttam Singh Rathore, Mr. Sharad Bhoite, Mr. Rajabhau Chaudhari for the applicant.

Ms. Supriya Kak, APP for the State.

PI Avinash Shilimkar, Local Crime Branch, Pune (Rural).

CORAM : RAJESH S. PATIL, J.

DATE : MARCH 4, 2025.

P.C. :

1. The learned APP on the last occasion has raised an objection about the maintainability of the present anticipatory bail application on the ground that non-bailable warrant was issued against the present applicant in August 2024 and thereafter, even proclamation was issued on 7/2/2025.

2. The learned Senior Advocate Sudeep Pasbola appearing for the

applicant submits that the incident in the present proceeding occurred on 16/3/2024 and non-bailable warrant was issued against the present applicant in the month of August 2024. The present applicant applied for anticipatory bail application before the Sessions Court in the month of January 2025. However, the same was rejected on 21/1/2025. Thereafter, the present anticipatory bail application has been filed before this Court on 23/1/2025. Much later on 7/2/2025, the proclamation has been issued. The applicant has already filed an application before the trial Court seeking stay to the proclamation.

3. The learned Senior Advocate referred the following judgments and orders in order to make his submissions that though the non-bailable warrant has been issued, still the applicant is entitled to file an application for grant of pre-arrest bail.

(a) The learned Senior Advocate referred to the order passed by the Supreme Court in the case of *Asha Dubey versus The State of Madhya Pradesh*¹ and more particularly he referred to paragraphs 5 and 8 of the said order.

(b) He also referred to an order passed by the Division Bench of Madhya Pradesh High Court in the case of *Deepankar Vishwas versus*

1 Crl. Appeal No. 4564/2024 (@ SLO (crl.) No.13123/2024.

State of Madhya Pradesh through P. S. Omti, District Jabalpur² ;

(c) He also referred to an order passed by the Allahabad High Court in ***Ankur Agarwal versus State of U.P.³***

(d) He also referred to the judgment of the Supreme Court in case of ***Srikant Upadhyay & Ors. vs. State of Bihar & Anr.⁴***.

4. I have heard the learned Senior Advocate appearing for the applicant and the learned APP for the State. I have also referred to the judgments relied upon by the parties.

5. It is an admitted fact that in the month of August 2024, non-bailable warrant was issued against the present applicant. There is no dispute that the said non-bailable warrant has not been challenged up till now. An anticipatory bail application filed by the present applicant before the Sessions Court was rejected on 21/1/2025. The present anticipatory bail application before this Court has been filed on 23/1/2025. During the pendency of the pre-arrest bail application before the Sessions Court, there was no protective orders in favour of the applicant. The proclamation was issued on 7/2/2025. In the judgment of the *Srikant Upadhyay* (supra), in paragraphs 24 and 25 it was clarified that when warrant of arrest or proclamation is issued,

2 Misc. Criminal Case No.25252/2022.

3 Neutral Citation No.2024:AHC-LKO:70686.

4 2024 SCC OnLine SC 282

the applicant is not entitled to invoke the extraordinary power. However, it is further clarified that this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. Paragraphs 24 and 25 of the said judgment are reproduced herein below:-

24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

25. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance ofailable warrants even when their co-accused, after the issuance ofailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non-ailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of

the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

(Emphasis supplied)

6. Taking into consideration the facts of the present case where a non-bailable warrant is issued against the present applicant in the month of August 2024 and the same has not been challenged by the applicant, according to me, this is not a case which falls under the exceptional category. Therefore, according to me, the law as laid down by the Supreme Court in *Srikant Upadhyay* (supra), does not help the applicant.

7. As regards the orders referred by the learned Senior Advocate appearing for the applicant of the Division Bench of the Madhya Pradesh High Court and the Single Judge of the Allahabad High Court, these are the orders passed by the Courts in the facts of those cases. In fact, the Division Bench of the Madhya Pradesh High Court while passing an order did not consider paragraph 25 of the judgment of *Srikant Upadhyay* (supra). Hence, though there is no law laid down in both the orders, and in any case they will not be applicable.

8. In *Lavesh Kumar versus State (NCT of Delhi)*⁵ it is held that

⁵ (2012) 8 SCC 730

when accused is “absconding” and declared as “proclaimed offender” there is no question of granting of the anticipatory bail. So also, in State of *Madhya Pradesh vs. Pradeep Sharma*⁶, relying the earlier decision in *Lavesh Kumar* (supra) the Court held that if the accused is declared as an absconder/proclaimed offender in terms of Section 82 of the Code of Criminal Procedure, he is not entitled to the relief of anticipatory bail. In *Srikant Upadhyay* (supra), it has been held that when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power.

9. In these circumstances, the present anticipatory bail application stands rejected and disposed of accordingly.

(RAJESH S. PATIL, J.)

⁶ (2014) 2 SCC 171