

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****ANTICIPATORY BAIL APPLICATION NO. 389 OF 2025****MOHSIN NABI MALIK****..... APPLICANT****VERSUS****ANC WORLI UNIT AND ANR.****..... RESPONDENTS**

Adv. Munira Palanpurwala a/w. Adv. Sunaiya Khan, Adv. Kairat Sayed,
Adv. Deepa Amati for the Applicant.

Mr. Nitin B. Patil, A.P.P. for the State.

Mr. Suresh B. Salunkhe, P.S.I., ANC Worli Unit present.

CORAM : RAJESH S. PATIL, J.**DATE : 29th APRIL, 2025****P.C. :-**

This application is filed for pre-arrest bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. 06/2024 dated 24th January, 2024 registered with ANC, Worli Unit for the offences punishable under Section 8(c), r/w. Sections 22(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Based on the complaint, an FIR has been lodged. The role of the present applicants is mentioned in the said FIR.

3. In the present case, the accused no.1 is arrested and he was

found with 100 gms of Mephedrone (MD). The accused no.3 was also arrested and he was found with 5.135 kg of MD. The accused no.4 was arrested and he was found with 500 gms of MD. Total four accused persons were arrested and two persons including the present applicant were shown as absconding.

4. On behalf of the State, it is submitted that the accused nos. 1, 3 and 4 were found with conscious possession of commercial quantity of contraband. It is also the statement of the accused no.4 that he was depositing the amount collected from the sale of the drugs with the present applicant. After the present FIR was registered, the applicant is absconding. The allegation against the present applicant is that he was involved in collecting the monies by selling of drug dealings. In order to find out the root of the drug dealing, it will be necessary that the present applicant is interrogated in order to complete the investigation.

5. Ms. Palanpurwala, the learned counsel for the applicant refers to an order of the Supreme Court passed in Special Leave to Appeal (Cri.) No. 1266 of 2025 dated 17th May, 2023. The said order refers to the case where the petitioner was not present on the spot and he was named as co-accused. Therefore, the Supreme Court enlarged the

petitioner anticipatory bail. The said order, which is not a judgment will not be helpful to the present applicant as in the present proceedings, the applicant is collecting cash out of the drug dealings. A huge quantity of 5 kg 735 gms of MD has been seized by the police.

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

“..... 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 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)

7. 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:-

¹ (2022) 17 SCC 391

² AIR OnLine 1997 SC 797

“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)

8. According to me, in view of the law laid down by the Supreme Court in the above judgments and considering the facts as narrated above, the **present anticipatory bail application stands rejected.**

[RAJESH S. PATIL, J.]