

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 412 OF 2025

Vijaya Dhanajay Gawali	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr. Satyam Harshad Nimbalkar i/b. Aman Pawar a/w. Abhishek Arote,
Advocate for the Applicant.

Mr. Nitin Pail, APP for the State.

Dadasu Dattatray Edake, EOW, PI Thane Rural present.

CORAM : RAJESH S. PATIL, J.

DATED : 28 APRIL 2025

P.C.:

1. This anticipatory bail application is for pre-arrest bail in connection with C.R. No.0513/2017 registered with Bhiwandi Taluka Police Station for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 and Section 3, 8 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963.

2. The learned advocate for the applicant submits that the present applicant is Accused No. 14, who served as the Sarpanch of Village

Paygaon after the year 2013. He submits that the only allegation in the FIR is that an NOC was issued by the Gram Panchayat pursuant to which construction of the subject building commenced. He further submits that, presuming without admitting that the present applicant was the Sarpanch of Village Paygaon during the relevant period, even then, a co-accused, who was the Sarpanch of Village Kharbay, was granted anticipatory bail by this Court (Coram: Milind N. Jadhav, J.) by order dated 10 February 2025 in Anticipatory Bail Application No. 3565 of 2024 concerning Accused No. 11.

3. He submits that, in any event, the applicant was not the Sarpanch during the relevant period when the NOC was issued. He further submits that Accused Nos. 1 to 7, who are arraigned as the developers of the subject buildings, are the main accused. He points out that the first informant and other flat purchasers have filed complaints with the concerned police station, alleging that the buildings were constructed on private land without obtaining building construction permission from the competent Planning Authority, and solely on the basis of an NOC issued by the Sarpanch. It was falsely made to appear that the Sarpanch could issue such construction permission, although Condition No. 3 of the said NOC clearly stated that prior permission of the competent Planning Authority was mandatory before commencing any construction activity.

4. He further submits that even if it is accepted that the developers carried out construction without valid permissions, the construction could be regularized by submitting a proper application to the relevant authority. Thereafter, subject to payment of fines, the construction could be legalized, benefitting both the flat purchasers (who could then get possession after obtaining the Building Completion Certificate and Occupation Certificate) and the Planning Authority (MMRDA), which would receive the requisite fees and penalties from the developers.

5. He submits that, in any case, the role attributed to the present applicant in the FIR is minimal. The co-accused, who was similarly placed as a Sarpanch, has already been granted pre-arrest bail by this Court on 10 February 2025. Therefore, the custody of the present applicant is not necessary.

6. The learned APP submits that on 10 May 2023, the Gram Panchayat, Paygaon, issued a construction permission certificate which is signed by the present applicant as the Sarpanch of the said village. He submits that the custody of the present applicant would be necessary to complete the investigation.

7. Considering the submissions made by both sides, it appears that there is a dispute regarding whether the present applicant was the Sarpanch of Village Paygaon during the relevant period. The co-accused No. 11 (Sunita Rajendra Chaudhari), who was the Sarpanch of Village

Kharbav at the relevant time, has been granted pre-arrest bail by order dated 10 February 2025.

8. The developers of the property, i.e., Accused Nos. 1 to 7, have already been granted regular bail.

9. Considering these facts, I am convinced that, as of today, the custody of the present applicant would not be necessary, provided that she cooperates with the police for the purpose of investigation. It is also noted that the charge-sheet has already been filed against the arrested accused persons. Furthermore, considering that the present applicant is a 45-year-old woman staying with her family, including two children, I am of the opinion that her custodial interrogation is not necessary at this stage.

10. In such a situation, according to me, a case is made out for granting Anticipatory Bail Application.

ORDER

(a) The anticipatory bail application is allowed

(b) In the event of arrest of the Applicant, C.R. No.0513/2025 registered with Bhivandi Taluka Police Station for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 and Section 3, 8 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management

and Transfer) Act 1963, the Applicant shall be released on bail furnishing P.R. bond to the extent of Rs.30,000/- with one or more sureties of the like amount.

(c) The Applicant shall co-operate with the investigation and attend the investigating officer of the concerned police station on 5 May 2025 and 6 May 2025 between 11.00 a.m to 1.00 p.m., thereafter as and when called.

(d) The Applicant shall not directly or indirectly make any inducement, threat or promise to victim and to any person acquainted with facts of case so as to dissuade him/her from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(f) The Applicant and his surety shall provide their respective mobile numbers, e-mail address and documents pertaining to the place of residence.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the

applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. In view of the above, the present Anticipatory Bail Application is disposed of.

(RAJESH S. PATIL, J.)