

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 464 OF 2025

Rohan Shankar Nikam
Aged : 20 years, Occ. Education,
R/o. Bhumkar Ali, Paud,
Dist. Pune

...Applicant

Versus

AMOL
DILIPRAO
NAWALE

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1. The State Of Maharashtra,
(At the instance of Paud Police
Station, Pune)

2. XYZ,
(copy to be served through IO,
Samarth Police Station, Pune)

...Respondents

Mr. Prashant Raul a/w. Adv. Mayur Sanap & Adv. Suraj Mhadgut,
Advocate for the applicant.

Mr. Amit A. Palkar, APP for the State.

Adv. Kunal Sinha, Advocate for respondent No.2.

CORAM : RAJESH S. PATIL, J.

DATED : 3 APRIL 2025

JUDGMENT.:

1. The present Application is filed by the applicant under Section 438 of the Code of Criminal Procedure corresponding with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking grant of anticipatory bail in connection with Crime No.520/2024, registered with Paud Police Station, District Pune (Rural) for the offences

punishable under section 74, 75, 78 of the Bharatiya Nyaya Sanhita, 2023 as well as under Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The learned APP further submits that a Non-Bailable Warrant has already been issued against the present applicant. He is a habitual criminal, there are two cases pending against him bearing C.R.No. 371/2024 and C.R.No. 513/2024. The victim is aged 14 years.

5. In the judgment of the *Srikant Upadhyay V/s. State of Bihar and Anr* reported in 2024 SCC Online SC 282 in paragraphs 25 and 26 it was clarified that when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power of pre-arrest bail.

6. 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 25 and 26 of the said judgment are reproduced herein below:-

25. 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.

26. 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 of bailable warrants even when their co-accused, after the issuance of bailable 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-bailable 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)

7. Taking into consideration the facts of the present case where a **Non-Bailable Warrant** is issued against the present applicant and the same has not been challenged by the applicant, according to me, this is not a case which falls under the exceptional category as clarified by the Supreme Court in *Srikant Upadhyay* (supra).

8. In view of the law laid down by the Supreme Court in *Srikant Upadhyay* (supra), the applicant is not entitled to seek pre-arrest bail. **The anticipatory bail application, hence stands rejected.** This Court has not gone into the merits of the anticipatory bail applications.

(RAJESH S. PATIL, J.)