



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.555 OF 2025

CHOTU LAXMAN VERMA

...APPLICANT

VS

THE STATE OF MAHARASHTRA

...RESPONDENT

...

Adv. Arif Siddiqui for the Applicant.

Adv. Supriya Kak, APP for the State.

PSI Nilesh Barge Byculla Police Station.

...

CORAM : RAJESH S. PATIL, J.

DATED : FEBRUARY 28, 2025

P.C.:

1. This is an application filed by the applicant under Section 482 of Bharatiya Nagarik Shuraksha Sanhita, 2023 for pre-arrest bail in C.R. No. 145/2021 registered with Byculla Police Station for the offences punishable under Sections 8(c) r/w section 22(c) of Narcotic Drug and Psychotropic Substances Act, 1985 (NDPS Act).

2. It is the case of the prosecution that on 8 November 2021 co-accused Aliya Hanif Shaikh was found in suspicious condition in front of B.P.T. Colony footpath, Mazgaon, Mumbai. When the officials of the Respondent apprehended the co-accused Aliya, they found 65 gram Mephedrone (M.D.) in her possession. On inquiry about the source of the contra band substance, she discovered the name of the present applicant. The applicant is absconding from that period till today. The

FIR to that effect was lodged. The accused Aliya in her statement dated 10 November, 2021 has specifically stated the name of the present applicant as a supplier of M.D. who is also her son-in-law. The present applicant thereafter moved an application for seeking anticipatory bail from the Sessions Court. The said application of the present applicant before the Sessions Court was rejected on 22 January 2025. Thereafter, the present pre-arrest bail application has been filed.

3. Learned counsel for the applicant submits that though the present applicant has married twice, he was not the son-in-law of the arrested accused. The banned substance was not found in possession of the present applicant. The applicant is ready to co-operate with the police. The quantity which has been recovered from the main accused is 65 grams which is just above 50 grams. Therefore, the protection needs to be granted to the present applicant. The applicant is ready to attend the police station as and when called for. In support of his submissions, he relied upon two orders passed by the Single Judge of this Court.

1. *Shivaji Mahadev Karpe vs. The State of Maharashtra And Anr.* [Anticipatory Bail Application No.763 of 2024]

2. *Kunal Dattu Kadu vs. Union of India* passed in [Anticipatory Bail Application No. 2173 of 2022].

4. The learned APP submits that there are at least 17

antecedents reported against the present applicant. Out of which, 2 are NDPS cases. The applicant is a habitual criminal and after filing of the FIR on 8 November 2021, he is absconding and he is not co-operating with the police. The quantity which was seized was more than 50 grams and therefore, is commercial in nature. The accused lady, from whom the banned substance was recovered, in her statement, has named the present applicant as being the supplier of the banned substance (M.D). Therefore, the custody of the present applicant is necessary. In support of her submissions, she relied upon the order passed by the Single Judge of this Court in the case of *Mehrun Aslam Samlewale vs. State of Maharashtra [passed in Anticipatory Bail Application No.999 of 2024]* decided on 15 April, 2024.

5. I have heard counsel for both the sides. There is no dispute that the quantity of 65 grams M.D. was found from the co-accused, who is the mother-in-law of the present applicant. Since the quantity falls under the criteria of commercial offence, it would be punishable under Section 37 of the NDPS Act. The co-accused has specifically named the present applicant as a supplier, who is her son-in-law. There are at least 17 antecedents reported against the present applicant. Out of which, two are NDPS case.

6. The Single Judge of this Court in the case of *Mehrun Aslam Samlewale* (supra) has referred two judgments of the Supreme Court

holding that in cases of accused apprehending arrest on the basis of statement of the co-accused, even in such case, taking into consideration the facts, anticipatory bail application can be rejected. The learned Single Judge referred to the judgment of the Supreme Court in *Muraleedharan vs. State of Kerala*, [(2001) 4 SCC 638].

Paragraph No. 7 of the said judgment reads as under :

“7. The above provision is in pari materia with Section 37 of the Narcotic Drugs and Psychotropic Substances Act. This Court has held, time and again, that no person who is involved in an offence under that Act shall be released on bail in contravention of the conditions laid down in the said Section. (vide *Union of India vs. Ram Samujh*). If the position is thus in regard to an accused even after arrest, it is incomprehensible how the position would be less when he approaches the court for pre-arrest bail knowing that he would also be implicated as an accused. Custodial interrogation of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that "no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-accused". Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained as a bugbear of how the discretion conferred on Sessions Judges under Section 438 of the Cr.PC would have been misused. It is heartening that the high Court of Kerala did not allow such an order to remain in force for long. By the impugned order passed by the learned Single Judge of High Court an unwholesome benefit wangled by the appellant was rightly reversed."

[Emphasis supplied]

7. Similarly, the Supreme Court in the case of *State of Haryana vs. Samarth Kumar* [passed in Criminal Appeal No.1005 of

2022] considered the question of pre-arrest bail in respect of offences punishable under NDPS Act. Paragraph Nos. 4, 8 to 10 of the said order reads as under :

- “4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in *Tofan Singh V State of Tamil Nadu* (2021) 4 SCC 1.
8. In cases of this nature, the respondent may be able to take advantage of the decision in *Tofan Singh v. State of Tamil Nadu* (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.
9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.
10. In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.”

[Emphasis supplied]

8. In the said judgments of the Supreme Court in clear terms have held that even if the co-accused names a person, in a given circumstances, the Court can reject the pre-arrest bail. I am bound by the law laid down by the Supreme Court in both the judgments.

9. Learned counsel for the applicant has referred two orders passed by the Single Judge of this Court. In ***Kunal Kadu*** (supra), the substance recovered was the ganja and the facts, it was stated that the applicant therein was the owner of the premises where the said

substance was found. On that basis the Court had granted pre-arrest bail application of the applicant therein. In the present proceeding, the co-accused, who is the mother-in-law has named the present applicant as a supplier of M.D., who has 17 antecedents.

10. Similarly, the order passed in ***Shivaji Karpe*** (supra) has been referred by the applicant. In the said order, it has reference to vehicle in which the contraband was found. The prosecution was of the view that, the said vehicle belonged to the applicant therein. However, the applicant in that case could prove that he was not the owner of the said vehicle. Hence, he was granted pre-arrest bail. Therefore, the facts in that case were also completely different then the present case.

11. In the present case, there are at least 17 antecedents reported against the present applicant. Therefore, the police needs to verify the chain of the present crime committed by the accused. The FIR was lodged on 8 November 2021 and till date, the present applicant is absconding. Therefore, it will be necessary that the custody of the present applicant is granted to the police so that they can verify the syndicate of the crime from the present applicant. According to me, there is no case made out to grant the interim protection to the present applicant. Hence, **anticipatory bail application stands rejected.**

(RAJESH S. PATIL, J.)