

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 685 OF 2025

Ganesh Govind Gaikar & Anr.

..... Applicants

VERSUS

State of Maharashtra & Anr.

..... Respondents

Mr.Kuldeep Patil a/w. Ms.Saili Dhuru for the Applicants.

Mr.Avinash A. Naik, A.P.P for the State.

Mr.Sarthak Diwan for the Respondent No.2.

Mr.Nitin Mandlik, P.S.I., Neral Police Station.

CORAM : RAJESH S. PATIL, J.

DATE : 25th MARCH, 2025

P.C. :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 438 of the Code of Criminal Procedure) in connection with Crime No. 0054 dated 11th March, 2024 registered with Neral Police Station, Raigad for the offence punishable under Sections 420, 465, 468, 471 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Maharashtra Ownership Flats Act, 1963.

2. In the complaint attached to the FIR, the specific allegations

have been mentioned against the present applicants.

3. On behalf of the applicants, it has been submitted that the present applicants in order to help the flat owners of the society to get their society registered as the builder/developer was not ready to help them, have issued a certificate which according to the prosecution is a completion/occupation certificate dated 26th March, 2021, a copy of the same is at page 38 of the present proceedings. It is further submitted that the present applicants have taken possession of their respective flats in the year 2018 and thereafter since they were facing difficulty of non-registration of the co-operative society on their request, the certificate being the completion/occupation certificate dated 26th March, 2021 was handed over to them. A notice under Section 41A of the Code of Criminal Procedure was issued to the present applicants twice, and on both occasions, the present applicants have co-operated. There are no antecedents as far as the present applicants are concerned. Therefore, the present applicants who are ready to co-operate, the custody of them is not necessary at all.

4. The learned A.P.P. appearing on behalf of the State has opposed this application. It is submitted that the present applicants have infact acted on the instructions of the developer/builder. On the basis of the

certificate issued by the present applicants, the Government Authorities have acted upon and the society got registered. Therefore, the present applicants have not only cheated the flat owners but have also cheated the Government Authority and the same is being done only because of the consideration being paid to the present applicants by the builder/developer. There was no resolution passed by the Gramsevak. Even then the present applicants thought it proper to issue completion certificate which is enclosed at page 38. This itself indicates that there is some illegal rectification because of which the certificate was issued. He submitted that the custody of the present applicants is necessary to find out the details of the crime.

5. On behalf of the first informant since nobody appeared, Advocate Mr.Sarthak Diwan was appointed by this Court. Advocate Mr.Diwan submitted that the certificate in question which is termed by the present applicants as occupation/completion certificate, was issued, not to help the flat owners but the said certificate was handed over to the builder/developer which can be easily seen in the statements made in the FIR. He submitted that the act of the present applicants suggests that they are hand in glove with the developer who has cheated the flat purchasers. Therefore, proper investigation

would be necessary.

6. I have heard learned counsel for both the sides and have gone through the contents of the FIR and the documents on record.

7. The fact remains that both the applicants are responsible officers of the Government Department. They are expected to act within four corners of the rules and regulations of law. They are responsible Government Officers and even if they want to help somebody genuinely, they would have to follow rules.

8. In the present case, the present applicants have admittedly issued a certificate which is called as a completion certificate/occupation certificate on 26th March, 2021. Presuming for a second that the purpose of issuance of the certificate was only for the purpose of helping the flat owners to form a co-operate housing society, the present applicants could have put up a sort of a rider that the certificate of completion is issued only on the request being made by the flat purchasers and the purpose would be to form a registered a co-operate housing society. Nothing of this sort is seen in the certificate dated 26th March, 2021.

9. So also, as pointed out by Mr.Diwan, the said certificate is not handed over to the flat purchasers but it is being handed over to the

builder/developer. One is not aware for what purpose the certificate was issued and where the certificate has been used by the developer/builder. It will be necessary for the Investigating Officer to find out where the certificate has been used and for what reasons, such a certificate was issued by the applicants.

10. 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)

11. A similar view has been taken by the Supreme Court in the case

¹ (2022) 17 SCC 391

of *the C.B.I. vs. Anil Sharma*², in paragraph 4 which reads as under:-

“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)

12. Considering the facts in the present proceedings as narrated in the complaint and going by the documents which have been shown to me, including the said certificate called as completion/occupation certificate and the law laid down by the Supreme Court in the above judgments, I find no merit in the anticipatory bail application. Hence, **the present anticipatory bail application is rejected.**

[RAJESH S. PATIL, J.]