



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 704/2025

SHAMSHER TALWAR AND ANR

...APPLICANTS

VS

STATE OF MAHARASHTRA AND ANR

...RESPONDENTS

...

Adv. Niranjana Mundargi a/w Keral Mehra for the Applicants.

Adv. Rutuja A. Ambekar, APP for Respondent No.1.

Adv. Vvaghish Mishra a/w Shantanu M. Sharma for Respondent No.2.

Pl. Suresh Padvi, Banking-10 E. O. W. Mumbai.

...

CORAM : RAJESH S. PATIL, J.

DATED : APRIL 15, 2025

PC.:

1. The applicants filed this application under Section 482 of Bhartiya Nagarik Suraksha Sanhita 2023 for apprehending their arrest in Cr. No. 6/2025 registered with EOW, Unit-10, Banking-II (earlier C.R. No. 16/2025, registered with Antop Hill Police Station) for the offence punishable under Section 120B, 406, 409, 420 of Indian Penal Code, 1860.

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

3. Mr. Mundargi, learned counsel for the applicants submitted that there are two trusts. One trust is the parent trust called as Sanatan

Dharm Sabha Trust and another trust is Kolwada Educational Trust. The applicant no.1 is the trustee. The trust is running school and junior colleges and is also involved in the various other educational activities. The complaint has been filed on alleged grounds by the opposite group. By holding meeting of the trust, it was resolved that the ground next to the school would be given to applicant no.2, who is running sports club for a period of 6 years. The applicant no.2 developed the said ground by inserting an artificial "turf" pursuant to a document titled as "conducting agreement." The school would use the facilities of the ground for their students in the morning session and in the evening session, applicant no. 2 can rent the "turf" to private parties by charging some basic rent. No complaints were filed by the first informant till the recent times. The "conducting agreement" is also signed by Gulshan Vijan, the then Chairman of the trust. By an after thought, the son of the deceased Gulshan Vijan has disputed the signature of his father on the "conducting agreement." The trust has been benefited by giving the ground on rent on which "turf" has been inserted by applicant no. 2 for private functions. Though notices were received by application no.1 from the police, due to fear of arrest, he did not attend the office of the police. Due to rivalry between two groups, the present FIR has been lodged. The applicants are belonging to good reputed family and they are ready to co-operate with the police. Therefore, they need not be

arrested.

4. The learned APP and Mr. Mishra, learned counsel for the complainant opposed the said application. It is submitted that a huge fraud has been committed by applicant nos. 1 and 2, which is against the trust. The applicant no. 1 acting on behalf of trust granting conducting rights to his own wife-applicant no.2 of the ground, belonging to the trust as lessee of the Municipal Corporation. The said Mr. Gulshan Vijan now deceased has never signed the conducting agreement. Even the minutes of the meeting relied upon by the applicant was never held as at least 8 members who are shown to have attended the said alleged meeting have stated in writing that they have never signed the minutes of the meeting. The “conducting agreement” prepared on 20 March 2020 and the rubber stamp of notary shows that it was before him and the date as 17 July, 2020 when the said Mr. Gulshan Vijan had fall and had to undergo a hip replacement due to the fracture which he had on 8 July 2020. The said hip fracture was treated in Hinduja Healthcare Hospital and unfortunately, Mr. Gulshan Vijan within few days died on 16 August 2020. The applicants have fraudulently taken over 10,000 sq. ft. area of the ground of the school in the heart of the Mumbai City at Sion Mumbai-22, and as per the investigating officer’s report earned around Rs.3 Crores. Therefore, the custody of the present applicants is necessary for completing the

investigation.

5. I have heard the counsel for all the sides and have gone through all the documents produced before me including the FIR. The applicant no. 1 is the husband of applicant no. 2. It is the case of the applicant's that applicant no. 2 runs a sports firm, by the name (Sports Vila). The case of the applicant's that the applicant no.2 has legal right in the subject land on which "turf" was prepared by the applicant no.2 pursuant to a document titled as "conducting agreement." The said "conducting agreement" mentions that it is for a period of 6 years. In the first paragraph of the "conducting agreement," the period mentioned is March 2020. On behalf of the Trust it has been shown that two persons have signed the said "conducting agreement", one being the present applicant and another signature according to the applicant is that of one Mr. Gulshan Vijan (then Chairman of the Trust) and on behalf of the other party the applicant no. 2 has signed the said "conducting agreement." It has been shown that there is a rubber stamp and signature of one notary Mr. R. B. Gupta having his address at Nanabhai Wadi, S.P. Road, Wadala (E), Mumbai-400037. The rubber stamp of notary mentions that it was "before me" and the date as 17 July, 2020. As per the case of the APP, on 8 July 2020, the said Mr. Gulshan Vijan had fall, and had to undergo a hip replacement due to the fracture which he had on 8 July 2020. The said hip fracture was

treated in Hinduja Healthcare Hospital. Unfortunately, Mr. Gulshan Vijan died on 16 August 2020. A medical report to that effect has been produced before me. There is no dispute that Mr. Gulshan Vijan died on 16 August 2020. The APP and the first informant has disputed the signature of Gulshan Vijan on the document titled as “conducting agreement” and hand writing expert’s opinion has been placed before this Court. The opinion of the said hand writing expert also mentions that the signature on the conducting agreement is not that of Mr. Gulshan Vijan. There are no witnesses to the said “conducting agreement.” Therefore, according to my view, once the signature of Gulshan Vijan is under doubt, as he has not been signed the “conducting agreement”, then the two signatures on the “conducting agreement” would be of applicant no. 1 (husband as Secretary of the Trust) and on the other part, sign of wife applicant no.2.

6. It has been submitted before me that the Trust signed the “conducting agreement” in view of meeting held on 15 March 2020. The Minutes of the meeting have been annexed to the anticipatory bail application, at page 163. The Minutes of the meeting starts from first page with signatures of the persons who have attended the said meeting on 15 March 2020 being attendance sheet. It seems that around 18 people signatures are shown on the said document. At least 8 peoples from that attendance sheet have executed an affidavit and also by a

statement made to the police have stated that they have never attended the said meeting and have not signed the said attendance sheet. It is also submitted before me that in fact, the signatures as shown at page No. 163, was on piece of a paper and the said names and signatures were pasted on the register of the society's Minutes of meeting. The son of the said Mr. Gulshan Vijan has also filed an affidavit stating that his father had never signed the "conducting agreement." So also, at page No. 164, the Minutes of meeting have been attached. The very first line states that the said Mr. Gulshan Vijan was not present in the meeting. There is no agenda produced before me of the subject meeting held on 15 March 2020. On behalf of the applicant it has been argued that the "conducting agreement" was prepared on 20 March 2020 and thereafter due to pandemic, it was taken to the notary on 17 July 2020. At that time, according to the applicant's case, the parties were not present before the said notary Mr. R. B. Gupta. It has been admitted before me by the counsel for the applicants that for conducting agreement, registration is not compulsory. I have observed that the said notary Mr. R. B. Gupta has signed and put his rubber stamp after the verification of the present anticipatory bail application.

7. On 2 June 2022, thirteen trustees have lodged a complaint with Secretary of the Trust as regards the subject land been given to applicant no. 2 against the interest of the Trust. So also, it has been

brought on record by the APP that Gumasta License (Corporation's License to conduct a business) as regards the firm of applicant no.2 is issued only of the year 2022 for the first time, whereas, the alleged "conducting agreement" according to the applicant is of March 2020. So also it is pertinent to note that the Municipal Corporation has already issued a notice on 30 August, 2024 as regards the illegal use of the said "turf."

8. The learned APP submitted that as per the investigation, as of now, the applicant no. 2 has received online payment of Rs.66 Lakhs and in cash and around Rs.3 Crores in total. The investigating officer has issued multiple notices to the applicants to co-operate. However, the applicants have chose not to co-operate and not ready to furnish any document for completion of investigation. Only one book was found at the "turf" which shows that various payments are received by applicant no.2's sport firm.

9. Mr. Mundargi, learned counsel for the applicant at this stage on instructions has submitted that he will not press the pre-arrest bail application as far as the applicant no.1 is concerned and the pre-arrest bail application should be considered only for applicant no. 2 (wife), she being a lady and mother of two sons.

10. Considering the fact that there is a siphoning of money of

Rs.3 Crores of the Trust. The document on which a claim of the applicant no.2 being in possession of the land on which “turf” was created by her, being titled as “conducting agreement” which her husband applicant no. 1 has signed on behalf of the Trust, the second signature is disputed, as of today I am convinced that the second signature of Mr. Gulshan Vijan has not signed the document as he was not in a position to sign a document at that stage i.e. on 17 July 2020 for medical reasons.

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

“12..... 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)

1 2022 SCC Online SC 1529

12. 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:-

“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)

13. Taking into consideration the contents of FIR, the documents on record and considering the law laid down by the Supreme Court in above judgments, according to me, no case is made out to grant protection to the present applicants. **The anticipatory bail application stands rejected and disposed of accordingly.**

(RAJESH S. PATIL, J.)

2 AIR OnLine 1997 SC 797