

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 721 OF 2025

REHAN SIRAJ KHAN

..... APPLICANT

VERSUS

STATE OF MAHARASHTRA & ANR.

..... RESPONDENTS

Adv.Sanjay Kharat a/w. Adv.Aleema Bohra for the Applicant.

Ms. Supriya Kak, A.P.P for the State.

Mr.Anshuman Sambre for the Respondent No.2.

Mr. Dattatraya Ankush Badgire, P.S.I., Nizampur Police Station, Bhiwandi present.

CORAM : RAJESH S. PATIL, J.

DATE : 29th APRIL, 2025

P.C. :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No. 131/2024 dated 22nd January, 2024 registered with Nizampura Police Station, Thane City for the offences punishable under Sections 380, 454, 457 of the Indian Penal Code, 1860.

2. The present applicant is arraigned as accused no.3. Based on the complaint, an FIR has been lodged. The role of the present

applicants is mentioned in the said FIR.

3. The accused no.1 has been arrested and he has disclosed in his statement, the role of the present applicant. According to the case of the prosecution, a cash amount of Rs.1,06,00,000/- and gold ornaments are stolen. Motorcycle has been recovered. The learned A.P.P. submitted a photograph from the CC TV camera of the date from the photograph, it can be seen that the present applicant is seen in the photograph wearing a scarf to cover his face and carrying some kind of cloth bag. In the second photograph again the accused present applicant alongwith the accused no.3 alongwith accused no.2 can be seen standing very close to the flat in which the theft committed. Admittedly, the present applicant is not the resident of the building where the subject flat was situated. Therefore, there was no purpose as to why the present applicant had been in the building premises where the subject premises was situated, that too with the scarf on his face and a cap on his head. Timing of the photographs show that it is midnight after 12:00 after 00:45 hours.

4. The learned A.P.P. has also pointed out that as against the present applicant, there are two antecedents, one at Surat and one at Bhiwandi Police Station. According to the Investigating Officer, the

recovery of the gold ornaments and the cash is still pending. The amount involved in the present crime is huge amount of Rs.1,06,00,000/-. The offence is of serious nature. For the purpose of completing the investigation, the interrogation of the present applicant is necessary.

5. 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)

6. 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)

7. Considering the law laid down by the Supreme Court and also similar kind of two antecedents of the present applicant and in view of the statement made by the co-accused, the **present anticipatory bail application stands rejected.**

[RAJESH S. PATIL, J.]

² AIR OnLine 1997 SC 797