

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 728 OF 2025

Yogita Sanjay Wagh	...Applicant
Versus	
The State Of Maharashtra	...Respondent
WITH	

ANTICIPATORY BAIL APPLICATION NO. 731 OF 2025

Sanjay Kishan Wagh	...Applicant
Versus	
State Of Maharashtra	...Respondent

Ms. Shraddha Vavhal a/w. Mr. Kiran Padalkar, Advocate for the Applicant.

Mr. Ashish R. Kachole, Advocate for Intervenor.

Ms. Rutuja Ambekar, APP for the State.

CORAM : RAJESH S. PATIL, J.

DATED : 19 MARCH 2025

P.C.:

1. It is the contentions of applicants/accused that they are apprehending their arrest in Crime No.0018/2015 for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860. They have no nexus with the alleged offence. The applicant no.1 and 2/accused are the permanent resident of Lonavala, Maval having no past criminal antecedent to their discredit.

2. Based on the complaint filed, an FIR has been registered, and the role of both applicants has been specifically mentioned in the said complaint.

3. It is submitted on behalf of the applicants that the money received from the respondent was returned via cheque to the account of the informant's brother, as the informant was working in the police department. Additionally, a sum of Rs.30,00,000/- was paid in cash. Therefore, the entire amount paid by the informant has been returned. The details regarding the development of a bungalow in Lonavala were explained to the informant during a meeting held at Hotel Uncle Kitchen in Malad. The applicant (Yogita Wagh) has no role in the present crime and was never associated with the applicant business transaction of (Sanjay Wagh). Her name has been added as an accused solely to pressure the applicants into illegally repaying the money.

4. The applicants are willing to cooperate with the investigating officer; hence, their custody is not necessary. There are no prior criminal antecedents against the present applicants.

5. The learned APP submits that, apart from the informant, several other individuals have also filed complaints against the present applicants. The applicants prepared a forged power of attorney by forging the signatures of the landowners. One such landowner, Mr.

Parekh, was not informed about the transaction that the applicants intended to execute. The custody of the present applicants is necessary for the investigating officer to conduct a thorough inquiry and determine the extent of their involvement in similar offenses.

6. The learned advocate for the informant submits that the applicants committed a similar fraud against the informant's brother. To settle their liability concerning the brother of the informant, the applicants paid him a sum of Rs.10,00,000/-. However, regarding the informant, an amount of Rs.43,32,000/- remains outstanding and has not been repaid. An agreement dated 24 May 2016 was executed by the applicant (Yogita Wagh) wherein the applicants admitted of receiving a sum of Rs.47,00,000/-. Furthermore, apart from this agreement, several other documents indicate the applicants' acknowledgment of receiving payments and their obligation to return the amount.

7. I have heard the learned advocates for the parties and have gone through the documents on record. The allegations against the present applicants suggest that, from the outset, they intended to commit fraud. They lured the informant and several others interested in purchasing property in Lonavala, a hill station near Mumbai, into buying bungalow plots. The applicants collected money from them and allegedly prepared a forged power of attorney using the landowners' signatures. The landowners have denied signing the said power of attorney. The

applicants promised to return the money collected from the informant and other investors; however, the funds were never returned. The cheques issued to the investors were dishonored upon presentation.

8. There is ample material on record to establish that both applicants were involved in forging documents for the purpose of misappropriating funds from the informant. Both applicants colluded in the commission of this crime.

9. 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)

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

¹ (2022) 17 SCC 391

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)

11. Taking into consideration allegations made in the FIR, the documents on record and considering the view taken 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