

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 754 OF 2025

Prasad Gawankar ...Applicant
Versus
State Of Maharashtra ...Respondent
WITH

ANTICIPATORY BAIL APPLICATION NO. 755 OF 2025

Alisha Kalkair ...Applicant
Versus
State Of Maharashtra And Anr ...Respondents

Mr. Kushal Mor a/w. Mr. Virendra Vikram a/w. Adithi Rao i/b M/s.
Khaitan & Co., Advocate for the Applicant.

Mr. Nitin B. Patil, APP for the State in ABA/754/2025.

Mr. Avinash A. Naik, APP for the State in ABA/755/2025.

CORAM : RAJESH S. PATIL, J.

DATED : 2 APRIL 2025

P.C.:

1. The present anticipatory bail applications the following order was passed:

1. *The present applicant in Anticipatory Bail Application No. 754 of 2025 claims to be working as Lead - Key Account Management at O(1) India Private Limited ("the Company"), while the present applicant in Anticipatory Bail Application No. 755 of 2025 is working as Associate - Catalog Management at O(1) India Private Limited.*

2. *The present anticipatory bail applications have been filed for transit bail in connection with an FIR registered with the Cyber Crimes Police Station, Hyderabad, being FIR No. 235 of 2025. It is submitted that the names of the present applicants do not appear in the FIR. However, an article published in The Hindu on 7 March 2023, mentioned the manufacturing and selling of counterfeit hair oils, wherein the names of the present two applicants were mentioned. Therefore, these anticipatory bail applications have been filed for*

transit bail.

3. It is submitted that both applicants are residing and working in the city of Thane which is part of Mumbai Metropolitan region. They have no criminal antecedents. They are married, and reside with their families. As per Section 79 of the Information Technology Act, 2000, there is an exemption of liability for intermediaries. The present applicants are working with the company O(1) India Private Limited, which operates an online platform called "ROPOSO CLOUT." The said platform merely facilitates the sale of products and explicitly states that it is not responsible for any defects in the products sold. Furthermore, if any product is found to be counterfeit, it is promptly removed from the platform.

4. It is submitted that on January 21, 2025, a complaint was received by ROPOSO, as enclosed on page 44. Immediate action was taken, and the subject product was removed from the ROPOSO website. Therefore, the company is protected under Section 79 of the IT Act.

5. As far as the present applicants are concerned, they are employees of the company and are not part of its management. Thus, they have no role to play in the alleged offense. However, they are willing to cooperate with the Cyber Crimes Police Station, Hyderabad, and are ready to travel to Hyderabad if required by the concerned police authorities.

5.1. The learned Advocate for the applicants relies upon the judgment passed in Google India Private Limited v. Visaka Industries, reported in (2020) 4 SCC 162. He specifically refers to paragraph No. 53 of the said judgment.

6. The learned APP submits that the crime was registered in Hyderabad. However, a plain reading of Section 79 of the IT Act provides protection to intermediaries. The present applicants are employees of the said intermediary company. Therefore, if protection is granted to the intermediary company, its employees should also be protected.

6.1. The learned APP relies upon the judgment in Shreya Singhal v. Union of India, reported in AIR 2015 SC 1523. He referred to paragraph Nos. 106 and 199(d).

7. Having heard the learned advocates for both sides, I am satisfied that Section 79 of the IT Act protects intermediaries. Section 79 of the IT Act reads as follows:

"79. Exemption from liability of intermediary in certain cases.-(1) Notwithstanding anything

contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3),

an intermediary shall not be liable for any third party information, data, or communication link made

available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation.—For the purposes of this section, the expression —third party information means any information dealt with by an intermediary in his capacity as an intermediary.”

8. *The present applicants are merely employees of the intermediary company. Hence, at this stage, it would suffice if they are directed to attend the concerned police station and they be granted protection from being arrested.*

9. *Stand over to April 2, 2025. Matter to come up under the caption “For Urgent Category.” In the meanwhile, following directions are passed :-*

(a) The applicants are directed to attend the office of the Cyber Crimes Police Station Hyderabad on March 24, 2025, between 11:00 a.m. and 1:00 p.m. and thereafter as and when required.

(b) For a period till 2 April 2025, no coercive steps shall be taken against the present applicants. However, the investigation may proceed further.

(c) The applicants are permitted to file necessary applications as advised before the appropriate court in the State of Hyderabad.

10. *Issue notice to the Respondents, returnable on 2 April 2025.*

11. *Apart from Court notice, the Applicant is permitted to serve the Respondent by advocate’s private notice, by all permissible modes of service and file affidavit of service before the next date of hearing.*

2. The learned advocate for the applicant submits that the applicants approached the Sessions Court at Hyderabad, and by its order dated 28 March 2025, the Sessions Court at Hyderabad allowed their petitions. Therefore, the present anticipatory bail applications have now become infructuous.

3. The present anticipatory bail applications are disposed of as infructuous.

(RAJESH S. PATIL, J.)