

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.803 OF 2025

Ajay Sanker M K	...Applicant
Versus	
The State Of Maharashtra	...Respondent

Mr. Pawan Mali, Advocate for the applicant.

Mr. Anand S. Shalgaonkar, APP for the State.

Mr. Appasaheb B. Handal, PSI Lasalgaon Police Station present.

CORAM : RAJESH S. PATIL, J.

DATED : 24 MARCH 2025

P.C.:

1. This is the application for anticipatory bail filed under Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023 in connection with CR No.86/2021, registered with Lasalgaon police station for the offences punishable under Section 420 and 406 of the Indian Penal Code.

2. The applicant fairly points out that the non bailable warrant was issued against the applicant. The said proceeding was challenged by way of quashing petition before the Division Bench of this Court. By its order dated 31 January 2025 the Division Bench dismissed the writ petition which was filed for quashing of proceeding by the present applicant. For ease of reference, the said order dated 31 January 2025 passed in writ petition no.5698 of 2024 is reproduced herein below :

1. *1. Learned APP points out, that the Petitioner is absconding and has not cooperated in the investigation at all. Therefore, we expressed our disinclination to entertain this Petition. Because, the Petitioner apparently has not approached this Court with clean hands. He is evading the due process of law.*

2. *Learned counsel for the Petitioner, then sought an adjournment.*

3. *At his request, stand over to 7th March 2025.*

3. I have taken a view in anticipatory bail application no.326 of 2025 by order dated 4 March 2025 that when non bailable warrant is issued against the applicant and thereafter, even proclamation was issued, the anticipatory bail application will have no merits and the same stands dismissed.

4. In the judgment of the *Srikant Upadhyay V/s. State of Bihar and Anr* reported in 2024 SCC Online SC 282 in paragraphs 25 and 26 it was clarified that when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. However, it is further clarified that this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. Paragraphs 25 and 26 of the said judgment are reproduced herein below:-

25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted

arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

26. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non-bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

(Emphasis supplied)

5. Taking into consideration the facts of the present case where a non-bailable warrant is issued against the present applicant and the same has not been challenged by the applicant, according to me, this is not a case which falls under the exceptional category as clarified by the Supreme Court in *Srikant Upadhyay* (supra).

6. In view of the law laid down by the Supreme Court in *Srikant Upadhyay* (supra), the anticipatory bail application stands rejected. This Court has not gone into the merits of the anticipatory bail applications.

(RAJESH S. PATIL, J.)