



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO. 2476/2024
WITH
ANTICIPATORY BAIL APPLICATION NO. 2179/2024
WITH
ANTICIPATORY BAIL APPLICATION NO. 954/2025**

**JITENDRA SUKHLAL RATHOD ..APPLICANT
VS.
STATE OF MAHARASHTRA ..RESPONDENT
WITH
INTERIM APPLICATION NO. 98/2025
IN
ANTICIPATORY BAIL APPLICATION NO. 2476/2024
WITH
INTERIM APPLICATION NO. 96/2025
IN
ANTICIPATORY BAIL APPLICATION NO. 2179/2024**

**SHANKEY SUSHIL AGARWAL ..APPLICANT
VS.
STATE OF MAHARASHTRA ..RESPONDENT**

Adv. Mainak Adhikary for applicant in all ABAs.
Mr. Anand S. Shalgaonkar, APP for State.
Adv. Vishal Krishna i/b. Law Care for intervener in all ABAs.

CORAM : RAJESH S. PATIL, J.

DATE : APRIL 21, 2025.

P.C. :

1. These applications are filed under Section 438 of the Code of Criminal Procedure for seeking pre-arrest bail in connection with the three different First Information Reports (FIRs) registered with the Dadar Police Station, Achole Police Station and Shivaji Park Police Station, for the offence punishable under Sections 406, 420, 465, 467, 468, 469, 471 read with 34 of the under Sections Indian Penal Code, 1860.

2. In the FIR, there are three accused. Accused no.1 Bela D'Souza @ Bela Patel is arrested, and she is behind bars. Bela's husband Melvin D'Souza is absconding. There are in all eight FIRs filed against accused persons. The present applicant has been arrayed as an accused in all the FIRs. There are certain protection orders been granted to the applicant by the Sessions Court. In FIR No.574/2024 filed on 29/7/2024 after Bela D'Souza was arrested, the present applicant has deposited a sum of Rs.7 lakhs on his behalf and Rs.44 lakhs on behalf of Bela D'Souza with the office of the IO.

3. As far as the present crime is concerned, the amount involved is Rs.1,17,49,001/-. In the FIR, the role of the present applicant is stated that he was the person who was instrumental in carrying out

bio-metric work. He is also called as “Boss” in the FIR under whose direction the co-accused performed their roles. The arrested accused Bela D’Souza is the sister-in-law of the present applicant and the co-accused who is absconding is the brother-in-law of the present applicant.

4. Though there are certain protective orders passed in other FIRs the fact remains that there are eight criminal antecedents reported against the present applicant. The main accused of the present crime is already arrested and behind the bars. The case of the prosecution is that the accused persons first be friendly with the victims, and thereafter, they promised to offer MHADA flats at a rate lower than market value. They used to further prepare fraudulent documents to show that the flats are allotted to the victims, collected monies from the victims and thereafter, the flats are not allotted to the victims neither the monies are paid back. MHADA is a State Government Housing Development Board, it builds houses for the lower income and middle income individuals. These cannot be a concept of handing over flats at low rate than the market. The present applicant claims to carry out the work of bio-metric outside the MHADA office, Bandra, Mumbai. The FIR named him as the main kingpin (“the Boss”).

5. In my view, in order to investigate the crime, it would be necessary to interrogate the present applicant. Not one at least there are eight FIRs registered against the present applicant. Together with the other co-accused, the present applicant has defrauded many persons. One of the victim in the present crimes is present before this Court who is 88 years old person, who has been waited for delivery of his flat.

6. 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)

7. 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

¹ (2022) 17 SCC 391

² AIR OnLine 1997 SC 797

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)

8. Considering the law laid down by the Supreme Court and in order to investigate the crime, the physical presence of the applicant for interrogation is necessary for completion of the investigation. Moreover, the possibility of pressurizing and threatening witnesses and tampering with the evidence cannot be ruled out. The co-accused is already behind bars who is the sister-in-law of the present applicant. I find no merit in the present anticipatory bail application. **The anticipatory bail applications of the applicant stand rejected and disposed of accordingly.**

9. In sequel, pending Interim Applications are also disposed of.

(RAJESH S. PATIL, J.)