Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 959 OF 2025

Yatish Sharma ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Sham Walve a/w Mr. Aditya Talpade Deepak, Pratik Karande Bhavik for the Applicant.

Mr. Deepak Singh, for respondent No.1 (UOI).

Mrs. Rajashree V. Newton, APP for the State-Respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 9, 2025

PRONOUNCED ON : SEPTEMBER 10, 2025

P.C.:

1. The applicant, apprehending arrest in connection with Case File No. DRI/MZU/NS-II/INT-146/2023/1081 registered by the Directorate of Revenue Intelligence, Nhava Sheva-II, Mumbai Zonal Unit, Uran, Raigad, seeks protection under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail.

2. The case has its genesis in specific intelligence received by the Directorate of Revenue Intelligence (DRI) regarding smuggling of cigarettes into India through mis-declaration of import cargo at Nhava Sheva Port. Acting upon the information, the officers intercepted container No. KOCU5036300 covered by Bill of Lading No. SE2311014-01 dated 27 November 2023, in the name of

Apnakart Sales Private Limited, Dwarka, New Delhi. The goods were examined under a Panchnama dated 5 December 2023 at Seabird Marine Services Pvt. Ltd. (JNPT) CFS, Navi Mumbai. The examination revealed recovery of 86,30,000 sticks of cigarettes of Gold Flake brand valued at Rs. 14,64,10,000. The declared goods were “luggage trolley bags.” It was noticed that not a single piece of the declared goods was found in the container.

3. The cigarettes so recovered were found to be in violation of the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 read with Notification dated 26 March 2018 issued by the Ministry of Health and Family Welfare. By virtue of the said Rules and Notification, the goods were classified as “restricted” goods. The consignment, being mis-declared, was found liable to confiscation under the Customs Act, 1962. Consequently, the goods were seized under a Seizure Memo dated 8 December 2023.

4. In the course of investigation, several searches were carried out to trace the members of the syndicate involved in the smuggling racket. Statements of several persons were recorded under Section 108 of the Customs Act, 1962. From these statements, it was revealed that Amit Kumar, son of Mange, and Amit Kumar, son of Ompal Singh, acted only as dummy directors of Apnakart Sales Private Limited. They admitted that they had provided their KYC documents to one Bhupendra Singh alias Sonu for formation of the firm and opening of its bank account. They were paid Rs. 5,000 per month for lending their documents. Both of them stated that it was Bhupendra Singh alias Sonu who operated the bank account of the company.

5. The statement of Bhupendra Singh further disclosed that he had arranged the purchase of the company through a chartered accountant for Rs. 1.5 lakh and subsequently appointed the above-named dummy directors at the instance of the present applicant. He admitted that he opened the bank accounts of the firm for which the applicant paid him Rs. 1 lakh in cash. He also stated that the applicant had instructed him to delete communications and destroy his mobile phone to obliterate evidence linking the applicant with the smuggling. He further revealed that all cash transactions were routed through the applicant, who used him only as a front to avoid any trace of his connection with Apnakart Sales Private Limited. While Bhupendra Singh attempted to distance himself from the actual operations, he candidly admitted to the purchase and sale of the firm at the instance of the applicant.

6. The material collected further indicates that the applicant played a significant though indirect role in the operations of the firm. The applicant's conduct of submitting fabricated documents, forged invoices, and manipulated balance sheets of M/s PIPL suggests an attempt to mislead the authorities and divert the course of investigation. The balance sheets showed glaring discrepancies, such as repetition of trade receivables in the name of "Sonu" over consecutive years, and invoices inconsistent with the financial statements. The version of Bhupendra Singh stood corroborated by the statement of Sohil Singh recorded under Section 108 of the Customs Act.

7. After the arrest of Bhupendra Singh, the applicant avoided personal appearance before the investigating agency despite repeated summons between October and November 2024. Instead, he responded only through emails or authorized representatives. His evasive conduct coupled with submission of forged documents demonstrates a deliberate effort to obstruct investigation and to shield himself from accountability. Samples of seized cigarettes were sent to ITC Limited for verification. By letter dated 10 January 2024, ITC confirmed that the seized cigarettes were counterfeit and unfit for human consumption.

8. The investigation thus disclosed existence of a well-organized syndicate engaged in smuggling of cigarettes, using shell companies, dummy directors, forged documentation, and concealed transactions to evade customs control. The dummy directors, who were paid meagre sums, had no role in the operations. The real control of the firm and its activities remained with the applicant and his associates. Considering the magnitude of the offence and the role attributed to the applicant, a Show Cause Notice dated 29 November 2024 was issued under Section 124 of the Customs Act, 1962, initiating proceedings against all accused persons.

9. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in the present case. He contended that the applicant is neither an importer nor a Customs House Agent (CHA). His name has surfaced only on the basis of statements made by co-accused persons who are themselves under liability. It was further urged that a Show Cause Notice has already been issued and, in so far as the applicant is concerned, the investigation has reached its finality. The statement of the applicant was duly recorded during the investigation. The applicant has appeared in response to the summonses issued to him and has extended full cooperation to the investigating agency.

10. Learned Advocate further submitted that even after search of the applicant's premises under Panchnama dated 23 April 2024, nothing incriminating was recovered. He also placed reliance upon various judgments of the Supreme Court and this Court, namely *Radhika Agarwal vs. Union of India and others, 2025 SCC OnLine SC 449; Manish Jain vs. Union of India, (2025) 28 Centax 136 (Bom.); Mohammad Hanif Papa Shaikh vs. Union of India, (2024) 21 Centax 120 (Bom.); Nitesh Roy vs. Union of India, (2023) 9 Centax 21 (Bom.); and Union of India vs. Kisan Ratan Singh and others, 2020 SCC OnLine Bom. 39.* On the strength of these submissions, it was urged that the present application for anticipatory bail deserves to be allowed.

11. Per contra, learned Advocate appearing for the Directorate of Revenue Intelligence opposed the application. He submitted that the declared goods in the container were shown as luggage trolley bags, however, upon examination, 86,30,000 sticks of cigarettes valued at Rs. 14,67,10,000 were recovered. The statement of co-accused Bhupendra Singh alias Sonu clearly names the applicant as the person who instructed him to delete communications and destroy his phone so that no evidence could remain linking the applicant with the smuggling activities. It was further submitted that all cash transactions were carried out by the applicant with a view to leave no trace connecting him to Apnakart Sales Private Limited. Bhupendra Singh admitted to buying and selling the firm, but maintained that he was unaware of the smuggling of cigarettes in the name of Apnakart Sales Private Limited.

12. Learned Advocate further invited attention to the invoices produced by the applicant during investigation, which were found to be forged. He pointed out that the cellphone number printed on the invoice consisted of eleven digits, which is impossible, and that the closing balance in the statement of account did not tally with the corresponding balance reflected in the earlier tax invoice. It was further submitted that the statement of Sohil Singh recorded under Section 108 of the Customs Act corroborates the version of Bhupendra Singh regarding the involvement of the applicant, Yatish Sharma. On this basis, it was argued that the applicant is the real and beneficial owner within the meaning of Section 2(3-A) of the Customs Act. The applicant also failed to appear in response to summons dated 12 October 2024, 22 October 2024, 6 November 2024, 18 November 2024, and 22 November 2024. On these grounds, it was prayed that the application for anticipatory bail be rejected.

13. I have considered the submissions advanced on behalf of the applicant as well as the Directorate of Revenue Intelligence. I have also perused the record of investigation placed before the Court.

14. The applicant seeks to project himself as a person falsely implicated, contending that he is neither an importer nor a Customs House Agent and that his implication rests solely upon the statement of co-accused persons. He relies upon the fact that a Show Cause Notice has already been issued, that his statement stands recorded, and that he has extended cooperation by responding to summonses. Reliance is also placed upon certain decisions of the Supreme Court and this Court to contend that in the absence of recovery from his possession, custodial interrogation is unnecessary.

15. However, the record paints a different picture. The contraband seized is of considerable value, being 86,30,000 sticks of cigarettes valued at Rs. 14.67 crore. The magnitude of the seizure itself shows that the offence is not an isolated act but part of a larger and well-organized smuggling activity. The modus adopted was deliberate, wherein the cargo was declared as “luggage trolley bags” while in reality it contained cigarettes, thereby deceiving customs authorities. Such mis-declaration strikes at the root of the regulatory system under the Customs Act and causes direct loss to the revenue of the State.

16. The contention of the applicant that nothing incriminating was recovered during the search of his premises cannot carry much weight at this stage. In cases of smuggling and economic offences of this nature, the prosecution is not required to rest its case only on physical recovery of contraband or incriminating articles from the residence of the accused. Such offences are often committed by creating layers of companies, dummy directors, and paper transactions, where the real role of the mastermind is concealed behind front entities.

17. The record collected by the investigating agency shows that the applicant was not a mere bystander but was actively directing the affairs of M/s Apnakart Sales Private Limited through dummy directors. The statements of co-accused recorded under Section 108 of the Customs Act point to the applicant as the person who financed the operations, arranged dummy directors, and instructed associates to destroy evidence to avoid detection. The forged invoices and manipulated financial statements furnished by the applicant further indicate a conscious effort on his part to mislead the authorities.

18. In this context, Section 2(3-A) of the Customs Act assumes importance. It defines “beneficial owner” to include not only the person in whose name the goods stand but also the person who exercises control or derives benefit from the import. The evidence on record, including statements of co-accused and the documentary discrepancies, prima facie show that the applicant falls within the ambit of a “beneficial owner.” Therefore, the liability of the applicant cannot be diluted on the ground that nothing was seized from his house.

19. Thus, the case of the prosecution is built not merely on physical recovery but on the overall role of the applicant in masterminding and controlling the operations of the smuggling syndicate through indirect means. At this stage, the material available against him is sufficient to deny the benefit of pre-arrest bail.

20. The statement of co-accused Bhupendra Singh clearly names the applicant as the person who instructed him to delete communications and destroy his mobile phone to erase all possible evidence of the applicant's role in the smuggling racket. This conduct, if viewed in its proper context, indicates a conscious attempt by the applicant to conceal his involvement and frustrate investigation. The veracity of this statement does not stand alone. It finds support from the independent statement of Sohil Singh recorded under Section 108 of the Customs Act, who has confirmed the role of the applicant as narrated by Bhupendra Singh. When two independent statements recorded under statutory power converge on the same set of facts, they gain strong probative value at the stage of considering anticipatory bail.

21. Therefore, it cannot be said that the applicant's implication rests on a solitary or uncorroborated allegation. On the contrary, the record demonstrates that his role is supported by consistent statements of co-accused and associates, pointing towards his active involvement in orchestrating the smuggling activities behind the facade of dummy directors and shell companies.

22. In addition to the corroborated statements, the conduct of the applicant during investigation further reinforces his complicity. The invoices and balance sheets furnished by him were found to be fabricated. The investigating agency has pointed out glaring discrepancies such as an eleven-digit mobile number printed on the invoices and mismatched closing balances in the statements of account as against the tax invoices. These anomalies cannot be brushed aside as clerical mistakes. They prima facie indicate that false documents were created and placed on record with the intent to mislead the authorities and to conceal the true nature of transactions.

23. Such fabrication of records, when viewed along with the statements of Bhupendra Singh and Sohil Singh, strengthens the inference that the applicant was not a passive or innocent party but was actively engaged in shielding the operations of the syndicate. The law is well settled that when a person, instead of producing genuine records, furnishes false and misleading documents, it is a strong circumstance pointing to guilty knowledge and conscious involvement.

24. Further, the applicant's conduct of avoiding personal appearance before the Directorate despite repeated summonses between October and November 2024 speaks volumes. Instead of subjecting himself to questioning, he chose to respond only through emails or through his representative. Such avoidance, coupled with his attempt to rely on forged documents, indicates a deliberate design to obstruct investigation. The principle that anticipatory bail cannot be granted to persons who are not forthcoming with the truth or who attempt to derail investigation applies with full force here.

25. Thus, the chain of circumstances, large scale seizure of smuggled goods, corroborated statements of co-accused, forged invoices and manipulated accounts, and deliberate evasion of summons, taken together, points towards the active role of the applicant in the smuggling operation. At this stage, it cannot be accepted that the applicant is a victim of false implication. On the contrary, the material on record prima facie discloses his involvement, which requires thorough custodial interrogation for unearthing the financial trail and the wider network of the syndicate.

26. The seriousness of the offence cannot be overlooked. Smuggling of such magnitude not only results in loss of revenue to the exchequer but also involves circulation of counterfeit and unfit goods, as confirmed by ITC Limited. The materials unearthed so far indicate the existence of an organized syndicate operating through dummy directors, shell companies, and forged documents. The applicant's role, as emerging from the record, cannot be said to be peripheral.

27. The plea of false implication, in the face of corroborative statements and forged documentation, does not inspire confidence at this stage. The fact that nothing incriminating was recovered from the applicant's premises during search does not, by itself, absolve him, particularly when the allegations relate to control and operation of the firm behind the smuggling activities rather than mere possession of goods.

28. The law relating to grant of anticipatory bail requires balancing individual liberty against the interest of a fair and effective investigation. In the present case, considering the gravity of the offence, the manner of operation of the syndicate, and the applicant's conduct during investigation, custodial interrogation appears necessary for unearthing the complete chain of transactions and to trace the financial trail.

29. In these circumstances, I am of the considered opinion that the applicant has failed to make out a case for grant of pre-arrest bail.

30. At this stage, learned Advocate for the applicant prayed for continuation of ad-interim relief. Considering the reasons stated above, the said request is rejected.

(AMIT BORKAR, J.)