



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.966/2025

KISHOR VITTHAL NERKAR

...APPLICANT

VERSUS

STATE OF MAHARASHTRA

...RESPONDENT

...

Adv. Shryash R. Mithare for the Applicant.

Adv. Ajay S. Patil APP for the Respondent State.

PSI Yuvaraj Chavan, Malegaon Taluka Police Station.

...

CORAM : RAJESH S. PATIL, J.

DATED : 9 APRIL 2025

P.C.:

1. This is an application under Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023, for grant of an anticipatory bail to the applicant, in connection with C. R. No.135 of 2025 registered at Malegaon Taluka Police Station, for the offence punishable under Sections 308(2), 303(2), 316(5) of the Bhartiya Naya Sanhita, 2023.

2. As per the complaint, an FIR has been lodged. The role of the present applicant is specifically mentioned in the FIR.

3. The learned counsel for the applicant submits that the applicant is a public servant. The applicant has not committed any crime. He is ready to co-operate with the police.

4. The learned APP submits that during the pendency of the proceedings, the applicant has further aggravated the whole situation and the statement of the investigating officer has been recorded on 23

March 2025 which mentions that the applicant in fact, threatened the investigating officer that he will direct his wife to file false case against the investigating officer and the other officers on the ground that they are outraging the modesty of his wife. He further submitted that the statement under Section 164 has already been recorded. Even on the earlier occasion the present applicant was suspended and departmental inquiry was conducted against him. He was reinstated after the punishment was imposed upon him. However, the applicant has not improved and has further committed a crime for which an FIR has been registered against him. The learned Sessions Court had noted the conduct of the present applicant and has rejected his pre-arrest bail application. If any, protective order is passed in favour of the present applicant there is much likelihood of the applicant threatening the witnesses and he may commit one more crime looking at his past conduct.

5. After hearing both the sides and considering the FIR and documents on record, it can be seen that the present applicant who is a police head constable was suspended on the earlier occasion and a departmental inquiry was held against him. He was reinstated after the punishment was imposed upon him. However, in the present FIR, it has been alleged that he has sold the scrap material and sewing machines. Even in the 164 statement recorded, the name of the present applicant

has been specifically stated. Furthermore, on 23 March 2025 the statement of the investigating officer was recorded, wherein he has stated that while the proceedings were ongoing before the Court, the present applicant has threatened the investigating officer that he will lodge a false complaint through his wife on the ground of outraging her modesty when the applicant's wife had been to the Court to attend the proceedings. Taking into consideration the conduct of the present applicant, the physical presence of the present applicant, for interrogation is necessary for completion of the investigation. Moreover, there is a possibility of the applicant to pressurize and threaten the witnesses and is likely to tamper with the evidence.

6. The Supreme Court in the 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

1 2022 SCC Online SC 1529

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 *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)

8. Taking into consideration the contents of FIR, the documents on record and considering the law laid down by the Supreme Court in the aforesaid judgments, according to me, no case is made out to grant protection to the present applicant. Hence, **the anticipatory bail application stands rejected and is disposed of accordingly.**

(RAJESH S. PATIL, J.)

² AIR OnLine 1997 SC 797