

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

ANTICIPATORY BAIL APPLICATION NO. 1102 OF 2025

Shahajad Tufel Khan .Applicant

Vs.

The State of Maharashtra .Respondent

Ms. Sana Raees Khan a/w. Ms. Neha Balani i/b. SRK Legal,
Advocate, for the Applicant

Mr. Mayur S. Sonawane, APP, for the Respondent – State

Mr. Y. A. Chavan, PSI, Malegaon Taluka Police Station, Nasik
(Rural) present

CORAM : ASHWIN D. BHOBE, J.

DATE : 30.05.2025

(VACATION COURT)

P. C.

1. Heard Ms. Khan along with Ms. Balani, learned Advocate for the Applicant and Mr. Sonawane, learned APP for the Respondent – State.

2. By the present Application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “**BNSS**”), the Applicant is seeking Anticipatory bail in connection with C. R. No. 135 of 2025 registered with the Malegaon Taluka Police Station,

Nasik (Rural) for the offences punishable under Sections 308(2), 303(2) and 316(5) of the BNSS Act.

3. Above said crime was registered on the basis of a complaint that goods truck containing scrap material and sewing machines of P. P. Metal and Goel Metal Company was being transported from Pune to Delhi. When the said truck was proceeding on Pune to Dhule Road at about 11.30 a. m., the same was intercepted by the police. Upon inquiry with the driver of the goods truck, it was revealed that scrap material was being transported without any valid document like bills. An agent by name Kailas Patil made an attempt to contact Police Head Constable by name Kishor Vitthal Nerkar, to resolve the issues. Mr. Kishor Nerkar told Kailas Patil to give him Rs. 7,00,000/- so as to allow the driver to take away the truck. Offence under Sections 308(2), 303(2) and 316(5) of the BNSS Act was registered initially against the Police Head Constable Kishor Vitthal Nerkar, and an unknown person.

4. Mr. Sonawane, learned APP appearing on behalf of the Respondent – State, submits that upon registration of the above said crime, investigation commenced and during the course of investigation, the role of the Applicant herein came to light. He

states that as per the investigation, the goods truck involved in the present crime belongs to the present Applicant. He further states that investigation revealed that the Applicant upon attaining knowledge of the registration of the crime, made an attempt to back date documents to create an impression that the said truck was sold by him prior to the incident. An Agreement to that effect was executed by the Applicant to support such contentions. In view of the said facts which came to light during investigation indicating the involvement of the Applicant in the offence, Section 61(2) of the BNSS Act was added in the crime.

5. Criminal Bail Application No. 195 of 2025 filed by the Applicant before the Court of the Additional Sessions Judge, Malegaon was rejected by Order dated 02.04.2025.

6. Ms. Khan, learned Advocate for the Applicant submits that FIR, as initially filed neither makes a reference to the Applicant nor to the truck. She submits that the offences punishable under Sections 308(2) and 316(5) of the BNSS Act would not be attracted to the case of the Applicant, he not being a public servant. She submits that the Applicant is neither owner of the truck nor has any connection with the material which was alleged

to be illegally transported by the said Applicant. She submits that the Applicant was not issued any notice under Section 41A of the Code of Criminal Procedure, 1973 (for short “**CRPC**”). She states that Applicant was issued a notice under Section 91 of the CrPC calling upon the Applicant to submit the documents as referred to in the said notice. She states that though the said notice under Section 91 of the CrPC was received by the Applicant, there was no compliance by the Applicant. She states that an opportunity may be given to the Applicant to appear before the investigating officer and put forth his case. She further states that after the occurrence of the alleged incident, an FIR was registered against father of the informant. She states that it is only as counter blast that the present crime is registered and the Applicant is falsely implicated. She relies on the decision of the Hon’ble Supreme Court in the case of *Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh And Another*,¹, *Arnesh Kumar vs. State of Bihar And Another*² and in the case of *Satender Kumar Antil vs. Central Bureau of Investigation*³ to contend that the provisions of Section

¹ (2012) 2 SCC 382

² [2014] 8 SCR 128

³ (2022) 10 SCC 51

41A of the CrPC were required to be complied with in the present case. She places reliance on the decision of the Hon'ble Supreme Court in the case of *Isaac Isanga Musumba And Others vs. State of Maharashtra And Others*,⁴ to contend that the offence of extortion as alleged in the crime is not made out. She submits that the custodial interrogation of the Applicant is not required for investigation, as such, prays for grant of bail.

7. Mr. Sonawane, learned APP submits that involvement of the Applicant in the crime is evident from the material collected during the course of investigation. He further states that it was only upon the investigating officer investigating found that the Applicant was involved in the crime. He states that the Bail Application filed by the other Accused – Kishor Vitthal Nerkar was dismissed by this Court vide Order dated 09.04.2025 passed in ABA No. 966 of 2025. He submits that the crime committed by the persons Accused is a well planned crime which requires to be investigated for which custodial interrogation of the Applicant is required. He submits that recoveries are yet required to be made. He submits that the investigation is at the preliminary stage.

⁴ (2014)15 SCC 357

8. I have given due consideration to the arguments advanced by learned Advocates and gone through the records placed before me with the able assistance of the learned counsel.

9. Nature of allegations as found in the crime registered is of theft and further allegations of extortion. Section 61(2) of BNS has been subsequently added in the crime. The crime indicates involvement of a public servant i. e. the Police Head Constable in the present crime. Anticipatory Bail Application No. 966 of 2025 filed by the said Police Head Constable was dismissed by this Court. Considering the material available with the investigation officer, it *prima facie* shows the Applicant being involved in the act of removing of scrap/transporting the scrap material. Investigation which is said to be at a preliminary stage reveals that the Applicant attempted to create back dated documents in connection with the goods truck involved in the crime. Prosecution case brings on record the complicity of the Applicant in the said crime. Applicant is not co-operating in the investigation which is evident from the fact that though a notice under Section 91 of CrPC was issued to the Applicant, there was no compliance of the same by the Applicant.

10. The case of *Isaac Isanga Musumba (Supra)* was a Petition filed under Article 32 of the Constitution of India praying for quashing of FIR. The instant case in hand is an Application filed by the Applicant under Section 482 of the BNSS Act. In addition, the facts of the case referred to in the said decision are neither similar nor identical to the case in hand. The said decision is of no assistance to the case of the Applicant.

11. Considering the gravity of the allegations and the material indicating Applicant's role, the investigating officer deserves a free hand to take investigation to its logical conclusion. Custodial interrogation of the Applicant would be necessary for investigation in the present crime. The Applicant is, therefore, not entitled to discretionary relief of Anticipatory bail.

12. Anticipatory Bail Application No. 1102 of 2025 is, therefore, rejected.

(ASHWIN D. BHOBE, J.)