IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1131/2025

BERNADETTE BHARAT VARMA ..APPLICANT
VS.
STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

WITH
INTERIM APPLICATION NO. 1680/2025
IN
ANTICIPATORY BAIL APPLICATION NO. 1131/2025

CAPT V SAURABH DUTTA ..APPLICANT
VS.
STATE OF MAHARASHTRA ..RESPONDENT

Adv. Niranjan Mundargi a/w. Adv. Keral Mehta i/b. Adv. Prasad Kulkarni for the applicant.

Ms. Supriya Kak, APP for the State.

Senior Advocate Satish Maneshinde a/w. Adv. Namita Maneshinde, Adv. Shanice Mansukhani, Adv. Anandini Fernandes for respondent no.2.

PI Callistus D’Mello, EOW, Unit – 10, Banking – 2.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : MAY 8, 2025.

PRONOUNCED ON: JUNE 9, 2025.

ORDER :

1. This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No. 21 of 2025 dated 25th February, 2025 registered with Cuffe Parade Police Station for the offences punishable under Sections 316(4), 318(4), 336(2), 336(3), 344, 61(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. It has been alleged in the FIR that huge amounts were transferred from the bank account of the complainant - United Services Club to the applicant/accused no.1 (Smt.Varma), and from the bank account of the applicant - Smt.Varma, the amount went to the Jyotirgamay Foundation – accused no.3. It is further alleged that the applicant/accused no.1 – Smt.Varma, from the siphoned off monies had purchased huge properties, in her and her husband’s name. On a complaint being received by the club and from the external auditor appointed by the complainant - club, and thereafter, meeting being held by the club with the accused persons, it was found that there were irregularities in the accounts of the club and the persons behind this were the present applicant, and accused no.2, and his family run foundation/accused no.3. The complainant-club, thereafter, issued a letter to the foundation to refund the amount siphoned off, of the club which is lying in their account. It is alleged that an amount of 11 Crores was being transferred to the account of accused no.2 and his firm. In the FIR lodged, the role of the present applicant is specifically mentioned.

3. It is submitted by the learned counsel for the present applicant that this is purely a civil transaction, and the custodial interrogation of the applicant is not necessary. The applicant is willing to cooperate with the investigating agency. The applicant has not committed any fraud and reiterates her willingness to cooperate with the investigation.

4. The learned APP and Senior Counsel Mr. Satish Maneshinde have opposed the present pre-arrest bail application. It is submitted that the present applicant, along with other accused persons has embezzled approximately an amount of Rs. 77 Crores of the complainant - United Services Club. The present applicant having access to the passwords of the club's bank accounts, is said to have transferred around Rs. 11 Crores from various accounts of the complainant to accused no.3 - Jyotirgamay Foundation via transactions conducted using her mobile phone. It is not disputed that accused no.3 - Jyotirgamay Foundation is linked to the accused no.2. The said foundation subsequently transferred funds to the accounts of accused no.2 and his firm. Therefore, custodial interrogation of the applicant is necessary to uncover the complete chain and mode of fund transfer from the club to the applicant and entities of accused no.2.

5. I have heard both sides and considered the documents on record.

6. It is alleged that the present applicant (Mrs. Varma), siphoned off Rs. 77 Crores from the complainant's club. Major portion of these transactions occurred through bank transfers. Of these, Rs. 11 Crores were transferred to an organization called Jyotirgamay Foundation/accused no.3, which admitted is run by accused no.2's family members. The Jyotirgamay Foundation then transferred funds to *Om Namah Shivay Enterprises*, a proprietary concern of accused no.2. Thereafter, *Om Namah Shivay Enterprises* transferred approximately Rs.7 Crores to various accounts, including accused no.2's personal account, his firm *C.P. Pandey & Company*, the family HUF, and also to accounts belonging to accused no.2's father and sister.

7. There are WhatsApp messages sent by the present applicant to the club on 27 January 2025, in which she admitted of transferring Rs.11 Crores, from various bank accounts to Jyotirgamay Foundation between 5 August 2024 and 9 October 2024. After the fraud came to light of the club, it was communicated to the applicant and the co-accused. Accused no.2 then wrote a letter to the Jyotirgamay Foundation, directing it to return the funds to the complainant club. In compliance, Rs. 1.50 Crores was refunded. However, the balance amount still remains unpaid. Thereafter, FIR is lodged.

8. The present applicant is arraigned as accused no.1 in the FIR. Accused no.2 had preferred a pre-arrest bail application, which was heard and was rejected by me on 24th April 2025. I understand that the order rejecting the anticipatory bail application of accused no.2 was carried to the Supreme Court. By its order dated 22nd May 2025, the Supreme Court has rejected the Special Leave to Appeal (Crl.) filed by accused no.2. While the matter was argued before me, accused no.2 has primarily blamed the present applicant for the crime. It was submitted before me that accused no.2 was working under the instructions of the present applicant (Mrs. Varma) and had prepared accounts of the complainant – Club based on the directions provided by the present applicant.

9. The applicant by her whats-app message dated 27th January 2025 addressed to the complainant – Club has admitted about her guilt. So also, in the present proceedings, the present applicant has filed an affidavit dated 28th April 2025, thereby admitting that she along with her husband owns fourteen residential flats in Mumbai and seven shops in Mumbai. She also has investment in Fixed Deposits worth Rs.1.1 crores, Gold ornaments valued at Rs.8,24,400/-. So also, it is stated in paragraph 11 that the applicant also owned various cars, viz. Range Rover, Mercedes, MG-Hectare. These cars subsequently have been sold and the sale proceeds were transferred to the trust owned by accused no.2. A sum of Rs.6 crores 45 lakhs were invested with "Vijay Group" and a sum of Rs.50 lakhs was invested with "Rajesh Investments".

10. According to the learned APP, the applicant has not cooperated with the investigation. The present applicant was earlier detected with Cancer according to her. The applicant herself has admitted her guilt in a whats-app message addressed to the complainant – Club. A huge amount of the complainant – Club has been siphoned off by the present applicant with the assistance from the co-accused. The co-accused have blamed the present applicant being the mastermind of the entire crime. The co-accused's pre-arrest bail was rejected by this

Court and the Supreme Court has rejected the SLP. The applicant has admitted that she owns at least twenty-one immovable properties in the city of Mumbai. She has not disclosed her source of income to purchase such huge properties. What is the total amount of fraud committed by the present applicant with the help of other co-accused has to be revealed from her.

11. The Supreme Court in case of *Sumitha Pradeep vs. Arun Kumar C.K. and another*[1] in paragraph 12 has held as under :-

> "………. 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. <u>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</u>. 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. <u>However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail</u>."

(Emphasis supplied)

12. 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)

13. Considering the view taken by the Supreme Court in above judgments, according to me, no case is made out to grant protection to the present applicants. **The anticipatory bail application stands rejected and disposed of accordingly**.

14. In sequel, the intervention application filed by the informant also stands disposed of accordingly.

(RAJESH S. PATIL, J.)

15. The learned counsel for the applicant at this stage requests that the operation of the impugned order be stayed for a period of four weeks.

16. The learned APP and the learned counsel for the intervener oppose this request.

17. The request is rejected.

(RAJESH S. PATIL, J.)