

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1317 OF 2025

MOHSIN AKBAR PATHAN

..... APPLICANT

VERSUS

STATE OF MAHARASHTRA

..... RESPONDENT

Adv. Sushant Prabhune for the Applicant.

Mr. Anand S. Shalgaonkar, A.P.P. for the State.

Mr.Devendra Khade, Police Havaladar, Baramati City Police Station.

CORAM : RAJESH S. PATIL, J.

DATE : 8th MAY, 2025

P.C. :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with FIR No. 121/2025 dated 13th April, 2025 registered with Baramati City Police Station, for the offence punishable under Sections 308(2) and 308(3) of the Bharatiya Nyaya Sanhita, 2023.

2. Based on the complaint, an FIR has been lodged. The role of the present applicants is mentioned in the said FIR.

3. It is undisputed that the present applicant is holding a post in the political party as a secretary of Youth Wing. The same can be seen

from the photocopy which is attached at page 35. He calls himself as a social worker as can be seen in the cause title. The complainant runs a coaching classes by name 'Excellence Science Academy'. The complainant is also the member of a WhatsApp group in which there are many other members including the present applicant. The complainant on 8th April, 2025 realized that in the said WhatsApp group on 4th April, 2025, the present applicant had posted obscene messages referring to the education academy of the complainant. The said post mentions that the complainant was carrying out certain sexual exploitation of students in his educational classes. The complainant was shocked to see such messages being posted by the applicant. Before the complainant could understand anything, few more messages were posted by the present applicant in the said WhatsApp group. The complainant also realized that the present applicant was also sending obscene post of the complainant in various other WhatsApp groups.

4. In the present anticipatory bail application, at page nos. 38 and 39, there is a reference of a complaint filed by the present applicant to the Fire Brigade Department of the Municipal Council. There is a reference of around 44 coaching classes alongwith their addresses

which according to the present applicant are not complying with the fire safety measures. The name of the present complainant is also a part of the 44 coaching classes.

5. It is further case of the complainant that thereafter when the accused was riding his motorcycle towards MIDC, he suddenly came near the complainant. As the complainant had watched the photographs of the applicant on his Facebook profile, the complainant could recognize him by face after awhile. The accused after coming near the complainant, demanded a sum of Rs.15 Lakhs in order to delete the obscene videos. He further submits that if the demand is not met, he would make the obscene videos viral. Accordingly, complainant had lodged an FIR against the present applicant.

6. Considering that the allegations which are made against the present applicant, who is calling himself as social activist and the documents attached to the present anticipatory bail application, it can be seen that he is also a member of a political party in the State. He also calls himself a Youth Leader.

7. Considering the messages sent by the present applicant in the WhatsApp group, it is important to get the entire information about the videos circulated by the present applicant, the only argument

made on behalf of the applicant is that with filing of the complaint with the government authorities, the accused person has stated that the complainant was exploiting the minor girls sexually, under the ground of providing additional marks and exemption in fees.

8. He further submitted that what is tried to be shown is actually not something done by the present applicant but it has been prepared by an Artificial Intelligence tool.

9. In my view, considering the FIR and the documents on record, the fact remains that the present applicant is holding a post in a political party, the messages which he has sent in various WhatsApp group are to be recovered by the police.

10. 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. 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

1 (2022) 17 SCC 391

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)

11. 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 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)

12. Looking at the nature of the offence, according to me, no case is made out and the **present anticipatory bail application stands rejected.**

[RAJESH S. PATIL, J.]