

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

Anticipatory Bail Application No.2110 of 2025

Mr Vishwa Bandhu Jaiswal
Adult, Indian Inhabitant,
Age: 59 yrs, Occ: Lawyer,
Permanent resident of 601, Nirvan
Apartments, Dutta Mandir Road, Off
Vakola Pipeline Road, Vakola
Santacruz East, Mumbai - 400 055. ... Applicant

Versus

1. The State of Maharashtra
At the instance of Inspector
In Charge, MIDC Police Station,
Through PP Sessions Court, Dindoshi,
Mumbai

2. XYZ ... Respondents

Mr SK Halwasia a/w Mr SS Halwasia i/by Mr Keshav Thakur
and Ms Priya Maurya for the applicant.

Mr PP Jadhav, APP for the respondent / State.

PI Pranay Kate, MIDC Police Station, Andheri, Mumbai.

Coram : R.N.Laddha, J.

Date : 30 July 2025.

P.C. :

The applicant, who apprehends arrest in connection with
CR No.360 of 2025, registered at MIDC Police Station,

Mumbai, for the offence punishable under Sections 64 of the the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. According to the prosecution's case, on 1 June 2025, around 2:00 p.m., the informant (respondent No.2), who was under the influence of alcohol, specifically beer, and was staying in room No.202 of Cliff Hanger Hotel, MIDC, Andheri (East), Mumbai, was visited by the applicant, who is the owner of the Hotel. The applicant is said to have entered her room on the pretext of engaging in a discussion related to the share market. However, once inside, he took undue advantage of her intoxicated state and committed the offence of rape.

3. The learned Counsel appearing on behalf of the applicant submits that the informant stayed at the Cliff Hanger Hotel on 31 May 2025 with her friend Subhash Rathod, who spent several hours with her before leaving. The CCTV footage shows them being intimate, and the informant herself admitted to being under the influence of alcohol at the time. She did not resist or raise any alarm, and her statement reflects uncertainty about whether any sexual act occurred. She only suspected something and approached the applicant for clarification.

4. The learned Counsel further argues that there are no

eyewitnesses and the FIR is based on mere suspicion or possibly a dream, without any supporting evidence. The learned Counsel further submits that the informant was wearing a tight-fitting dress, unlikely to be removed without damage. The CCTV footage has been seized, and the informant referred to the applicant as 'uncle' in chats. The applicant, aged 59 and a practising advocate, claims the informant's conduct raises doubts about her allegations, and that the necessary ingredients of Section 64 of BNS are not fulfilled.

5. On the other hand, the learned Additional Public Prosecutor representing respondent No.1/ State vehemently opposes the applicant's request for pre-arrest bail, submitting that the offence is of a grave and serious nature, which warrants a cautious and stringent approach. At the relevant time, the informant was under the influence of alcohol, and the applicant exploited her vulnerable and impaired state to engage in non-consensual sexual intercourse.

6. The learned APP further submits that anticipatory bail is an exceptional and discretionary remedy, not to be granted in routine cases, especially when the accusation are grave, specific, and *prima facie* indicative of the applicant's involvement in a serious crime. He further submits that the investigation is at a

nascent stage, and in order to ensure a fair, unbiased, and comprehensive probe, custodial interrogation of the applicant is imperative. Additionally, the learned APP expresses apprehension that if the applicant is protected by pre-arrest bail, there is a strong likelihood that he may attempt to interfere with the ongoing investigation, tamper with material evidence, and exert influence over key witnesses, thereby obstructing the course of justice.

7. This Court has given anxious consideration to the rival contentions and perused the records.

8. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straitjacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to

the decision of the Hon'ble Supreme Court in *Srikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

9. It appears from the record that, on the intervening night of 1 June 2025 and 2 June 2025, room No.202 of the Cliff Hanger Hotel was booked in the name of the informant. The applicant was also present at the same Hotel on the said night. As per the initial version of events, the applicant entered room No.202, which was occupied by the informant, under the pretext of discussing matters related to share marketing. At that time, the informant was allegedly under the influence of alcohol. The informant has specifically stated in her complaint and subsequent statement that she had consumed beer and, taking advantage of her impaired capacity to resist, the applicant committed sexual intercourse with her without her consent. The statement of the Hotel manager further corroborates the presence of both the applicant and the informant in room No.202 on the night of the alleged incident. It has also been stated that the applicant is the owner of the Hotel where the incident took place, while the victim was present as a guest. This relationship inherently suggests the existence of a fiduciary or dominant position, wherein the applicant exercised a higher degree of authority and influence.

1 2024 SCC OnLine SC 282.

As the owner, the applicant held control over the Hotel premises and bore the responsibility of ensuring the safety and well-being of all guests. This position of control and trust amplifies the gravity of the alleged incident, as it occurred within a space under the applicant's direct supervision and management. The possibility of tampering with evidence and exerting influence over the Hotel staff witnesses cannot be ruled out.

10. In view of the serious nature of the alleged offence, the particular circumstances highlighting the vulnerability of the victim, the allegation that the crime is said to have occurred at a location under the control and dominion of the applicant, and considering that the key witnesses are individuals employed by the applicant, this Court is of the considered opinion that it would not be appropriate to exercise its discretionary powers in favour of the applicant at this stage. Furthermore, the interest of justice and the need to ensure a free, fair, and effective investigation further strengthen the view that no indulgence is warranted. Accordingly, the present application stands rejected.

[R. N. Laddha, J.]