

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION
NO.2394 OF 2025

Nitin Suryabhan Upadhye,
Age about 44 years, Occupation : Professional,
Residing at Flat No.111, B Wing,
Moryaparsh Society, Kirkatwadi, Pune ... Applicant
V/s.

1. State of Maharashtra,
Through P.I. Faraskhana
Police Station, Pune.
2. Umesh Yashwant Waghe ... Respondents

Mr. Chinmay Patil a/w. Mr. Amit K. Pardeshi, Advocate for
Appellant

Mrs. P.P. Shinde, Addl. P.P.

Mr. Shreyas P. Baraswade a/w. Mr. Dhiraj J. Pungaliya,
Mr. Vishal Deshpande, Advocate for Intervener/Complainant

CORAM : SANDESH D. PATIL, J.

DATE : 16TH SEPTEMBER, 2025.

JUDGMENT :-

1. Learned Advocate Mr. Shreyas Baraswade states that he has already filed his Intervention Application by E-filing, bearing Stamp No.18554 of 2025. Learned Advocate for the applicant has

received the same. Both the advocates are ready to argue the matter. The applicant to carry out amendment to add the original complainant as party respondent No.2. Amendment be carried out forthwith.

2. The present Anticipatory Bail Application is filed by accused No.3, Nitin Suryabhan Upadhye in apprehension of his arrest in connection with FIR No.0129 of 2025 registered with Faraskhana Police Station, Pune u/s. 61(2) (a), 318(4) and 3(5) of Bhartiya Nyaya Sanhita, 2023 ('B.N.S.' for short).

3. The complainant is officer of Tirupathi Urban Cooperative Credit Society. The complainant has alleged in the FIR that one Mr. Sham Shantaram Holkar and Mr. Rohit Amat Biyani together approached the Tirupathi Urban Cooperative Credit Society for availing loan.

4. It was alleged that there were 7 such applicants, who took loan of Rs.87,50,000/-. Mr. Sham Holkar had mortgaged one property as and by way of security for repayment of loan. Ultimately the amount was disbursed. The accused Nos. 1 to 7 repaid loan amount for some time, thereafter they defaulted. The society initiated proceeding under Section 101 of Maharashtra Co-operative Societies Act ('MCS Act' for short) with the Assistant Registrar of Co-operative Societies. It was later revealed

on 16th December 2022 that the property was already mortgaged by Mr. Sham Holkar and Mr. Rohan Biyani with Indostar Capital Finance. The complainant further alleges that Mr. Sham Holkar was never the owner of the property in question. The FIR alleges that all the accused cumulatively caused loss to the tune of Rs.3,55,22,046/- to the society. The FIR was registered on 4th July 2025 with the Faraskhana Police Station.

5. Learned advocate for the applicant contended that the applicant had made an application for loan on 12th February 2018. The loan was sanctioned in favour of applicant on 26th February 2018 to the tune of Rs.21,50,000/-. Upon instructions from the present applicant the loan was disbursed to Mr. Biyani. On 3rd December 2019 recovery certificate u/s. 101 of the MCS Act was issued in favour of the society. The applicant has repaid an amount of Rs.8,65,000/-, so far. The advocate for the applicant states that the complaint was filed on 7th December 2024. It is contention of the applicant that no offence of cheating is made out. There is already a recovery certificate granted by the competent authority. The applicant states that custodial interrogation is not necessary and that he will cooperate with the investigating authorities along with all necessary documents.

6. The complainant – respondent No.2 contended that it was conspiracy of the accused in as much as inspite of the fact that

the property was already mortgaged by Mr. Holkar and Mr. Biyani (co-accused) to Indostar Capital Finance, yet this was suppressed and loan was obtained from the society.

7. Ms. Sangita Shinde, the learned Addl. P.P. appearing for the State fairly submitted that this was dispute between the debtor and a creditor for recovery of money.

8. After hearing learned counsels for both the sides, I am of the opinion that the applicant had availed loan of Rs.21,50,000/-. The respondent No.2 was very well aware about the application and reasons for availing loan. The respondent No.1 had accordingly disbursed the loan in accordance with the application. The reason mentioned in the application was “to make repayment of debt”. The respondent No.2 had initiated proceeding u/s 101 of MCS Act against the applicant. As a matter of fact even as per the case of respondent No.2 the applicant has repaid substantial amount of Rs.8,65,000/-. Thus no offence u/s 318 (4) can be said to have been committed by the applicant. In order to attract offence of cheating, there must be intention of cheating right from the beginning as held by the Hon’ble Supreme Court in (i) **S.W. Palanitkar V/s. State of Bihar [(2002) 1 SCC 241]** and (ii) **Delhi Race Club (1940) Limited and Ors. V/s. State of Uttar Pradesh and Anr. [(2024) 10 SCC 690]**.

9. The application was made by the applicant for loan on 12th February 2018 with the complainant society. The application states that the amount was sought for the purpose of repayment of debts of the applicant. The said application is placed on record by the complainant, respondent No. 2 in his intervention application. The respondent No.2 had also filed application u/s. 101 of MCS Act and in fact certificate was issued u/s. 101 of MCS Act to the tune of Rs.22,24,711/- in favour of society. The said recovery certificate is placed on record along with application for intervention filed by the respondent No.2. The respondent No.2 contended that the applicant had in fact repaid an amount of Rs.8,65,000/- out of the sanctioned amount of Rs.21,50,000/-.

10. In the present case admittedly substantial amount was repaid by the applicant to the respondent. The respondent No.2 has resorted to provision for recovery of its outstanding money. It is settled principle of criminal law that criminal law cannot be set into motion for the purpose of recovery of an amount. The Hon'ble Supreme Court in **Bimla Tiwari V/s. State of Bihar and Ors. (2023) 7 SCC 461** has reiterated that process of criminal law cannot be utilised for arm twisting and money recovery.

11. The recovery certificate was obtained by the society/complainant on 3rd December 2019. However, criminal proceeding was initiated on 7th November 2024. Thus there is

gross delay in initiating criminal proceeding. In my respectful opinion this is a fit case where the application can be allowed. Custodial interrogation of applicant is not needed. Needless to say that this court has expressed opinion only for the purpose of deciding Anticipatory Bail Application. Prima facie observations are made only in facts of present case and other applications will be decided on its own merits.

12. The Anticipatory Bail Application No. 2394 of 2025 is therefore allowed on the following conditions :-

ORDER

- (a) In the event of arrest of the applicant in connection with C.R. No.0129 of 2025 registered with the Faraskhana Police Station for the offence punishable u/s. 61(2)(a), 318(4), 3(5) of Bhartiya Nyaya Sanhita, 2023, be released on PR Bond of Rs.25,000/- with one or two sureties of like amount.
- (b) The applicant to report to the Faraskhana Police Station, Pune, as and when called for.
- (c) The applicant shall not tamper with the prosecution witness and shall not contact or influence the complainant or any witness in any manner.

127.ABA-2394-2025

The Anticipatory Bail Application No.2394 of 2025 is disposed of accordingly.

(SANDESH D. PATIL, J.)

amraut