

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2496 OF 2025

Nanda Nanasaheb Gaikwad

...Applicant

Versus

State of Maharashtra

...Respondent

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Mr. Kamar Ali Shaikh a/w Mr. Rajabhau Chaudhari a/w Kishan Chaudhari i/by Mr. Vishal Kolekar, for Applicant.

Mr. S.M. Yadav, APP for the State.

PSI, Mr. Rahul Pawar,

ASI Mr. Santosh Dolas, Pune City Crime Branch present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 12th September 2025

P.C.:

1. Heard Mr. Shaikh, learned Counsel appearing for the Applicant and Ms. Yadav, learned APP for the State. On 11th September 2025 I have heard submissions of Mr. Karmarkar, learned APP.

2. The Applicant is seeking pre-arrest bail in connection with CR No.777 of 2023 lodged under Sections 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, 1860 (“**IPC**”) and Sections 82 and 83 of the Registration Act, 1908. The prosecution has also

invoked the provisions of the Maharashtra Control of Organised Crime Act, 1999 ("**MCOC Act**") and applied the same.

3. Mr. Shaikh, learned Counsel submitted that the Applicant is a lady and Senior Citizen of 70 years. He submits that the Applicant is not involved in the crime and therefore the Applicant be granted anticipatory bail.

4. I have heard Mr. S. A. Karmarkar, learned APP yesterday and Ms. Yadav, learned APP today. Both of them submitted that the offence is very serious, provisions of MCOC Act has been invoked and that the Applicant is absconding and accordingly the Application has been filed on behalf of the Prosecution for issuance of proclamation under Section 84 of Bhartiya Nagarik Suraksha Sanhita, 2023 and the learned Special Court (MCOCA), Pune issued a proclamation under Section 84 of the BNSS requiring the Accused to appear before the Court on or before 30th August 2025 and inspite of the same she is absconding. They relied on following four judgments of the Supreme Court to contend that if the Accused is absconding and declared as proclaimed offender then

in that case there is no question of giving such offender benefit of Section 438 of Code of Criminal Procedure, 1973 (“CrPC”).

- (i) Srikant Upadhyay V. State of Bihar¹ .
- (ii) State of Haryana V. Dharamraj².,
- (iii) Laves V. State (NCT of Delhi)³
- (iv) Abhishek V. State of Maharashtra⁴

5. Before consideration of the rival contentions, it is necessary to set out the prosecution case as set out in Paragraph No.2 of the Order dated 7th August 2025 passed in Criminal Bail Application No.2369 of 2025 by Additional Sessions Judge, Pune, which reads as under :-

“2] The prosecution case, in brief, is that the applicant is the wife of the accused Nanasaheb Gaikwad. It is alleged that both the accused, in furtherance of their common intention, prepared a forged Occupation Certificate in respect of first floor of the premises situated on plot No. 108, survey No. 127/1A to 1E, Aundh Pune purportedly issued by the Local Authority. Based on such forged document, they leased out a commercial premises to the State Bank of India. Pursuant to the said lease, the lease amount was transferred by the Bank in the joint bank account held by the present applicant and the main accused Nanasaheb.”

1 2024 SCC OnLine SC 282

2 (2023) 17 SCC 510

3 (2012) 8 SCC 730

4 (2022) 8 SCC 282

6. At the outset, it is required to note the submissions of learned APP that as the Applicant - Accused is absconding and declared as proclaimed offender, there is no question of giving such offender benefit of Anticipatory Bail. As noted herein above, learned APP has relied on the four Judgments of the Supreme Court. In these decisions it has been held by the Supreme Court that if from the materials and information on record, it is clear that the Applicant is not available for interrogation and investigation and is declared as “absconder” then in such cases, there is no question of granting pre-arrest bail. It has been specifically held that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of CrPC, such person is not entitled to the relief of anticipatory bail.

7. In the present case, as the learned Sessions Court, by Order dated 10th July 2025 has issued proclamation under Section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 requiring the Accused to remain present before the said Court on or before 30th August 2025. The learned APP states that the said order has not been

complied with. Therefore, by Order dated 11th September 2025 this Court has directed that the Applicant shall personally remain present before the Court as proclamation has been issued. Today, the Applicant is not present in the Court. The learned APP states that the Applicant is not available at her residence and she is absconding.

8. Mr. Shaikh, learned Counsel for the Applicant submitted that the Applicant is an old lady and she is not in position to move outside the house and not able to walk even in the house also and therefore she is not present in the Court today. However, Mr. Yadav, learned APP as noted hereinabove submitted that the Applicant is absconding and not available at her residence. At that time, Mr. Shaikh, learned Counsel submitted that he has no instructions about whereabouts of the Applicant as he is taking instructions from the relatives. Thus, it is very clear that the Applicant is absconding to conceal herself and not making available for interrogation and investigation.

9. Thus, the observations of the Supreme Court in above four cases are squarely applicable to the present case. Thus, as observed

by the Supreme Court as the Applicant is not available for interrogation and investigation and is declared as “absconder” then in such cases, there is no question of granting pre-arrest bail. It has been specifically held that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender, such person is not entitled to the relief of anticipatory bail.

10. The Applicant has following antecedents :-

i. CR No.293 of 2021 registered with Chaturshringi Police Station, District-Pune for the offence punishable under Sections 498A, 323, 325, 406, 420, 506, 354, 120, 392 and 34 of IPC and Section 3 of the Dowry Prohibition Act, 1961 and Section 3 of the Maharashtra Prevention And Eradication Of Human Sacrifice And Other Inhuman, Evil And Aghori Practices And Black Magic Act, 2013.

ii. CR No.325 of 2021 registered with Chaturshringi Police Station, District-Pune for the offence punishable under Sections 307, 386, 341, 506(2), 141, 143, 147, 148 and 149 of IPC and Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014, Section 3 and 25 of the Arms Act, 1959, Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951, Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control Of Organised Crime Act, 1999.

11. This is the case where although the offence is registered in the year 2023 and provisions of the Maharashtra Control of Organised Crime Act, 1999 have been invoked in the year 2023, anticipatory bail application has been filed for the first time in the year 2025 being Criminal Bail Application No.2369 of 2025 before the learned Sessions Court, Pune under Section 438 of the CrPC seeking pre-arrest bail in Crime No. 777 of 2023 registered with Chatushrungi Police Station, for the offences punishable under Sections 420, 467, 468, 471, 120-B read with Section 34 of IPC, Sections 82 and 83 of Registration Act and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999. In this case, as the Applicant was absconding, an application has been filed on behalf the prosecution of issuance of proclamation for the Applicant under Section 84 of the BNSS Act and accordingly, the learned Special Judge, MCOC issued proclamation by Order dated 10th July 2025 requiring the Accused to appear before the learned Special Judge, MCOC, Pune on or before 30th August 2025 which the Applicant has failed to comply.

12. Ms. Yadav, learned APP states that the Petitioner is filing proceeding after proceedings for avoiding arrest. She submits that

the Criminal Writ Petition No.2455 of 2024 has been filed seeking quashing and setting aside of C.R. No. 777 of 2023 registered at Chatushrungi Police Station. The said Writ Petition has been allowed to be withdrawn by Order dated 19th June 2024 passed by the Division Bench of this Court. Thereafter another Writ Petition bearing Criminal Writ Petition No.4012 of 2024 has been filed seeking same prayer without disclosing withdrawal of earlier Criminal Writ Petition No.2455 of 2024. In the Order dated 9th December 2024, another Division Bench passed in Writ Petition No.4012 of 2024 have recorded that there is an attempt to suppress important facts and recorded that these practices are required to be strongly deprecated. The Order dated 19th June 2024 passed by the Division Bench in Writ Petition No.2455 of 2024 reads as under:

- “1. Learned Advocate for Petitioner on instructions, seeks leave to withdraw petition unconditionally.
- 2.. Disposed off as withdrawn.”

The relevant part of Order dated 9th December 2024 passed by the Division Bench in Criminal Writ Petition No.4102 of 2024, reads as under:

“(5) Considering that earlier Writ Petition No.2455/2024 for the same subject matter in respect of C.R. No.777 of 2023 registered at Chatushrungi Police Station Pune was withdrawn unconditionally. We are not inclined to entertain this Petition and hence, it is dismissed.”

13. The Supreme Court in the case of **Nikita Jagannath Shetty alias Nikita Vishwajeet Jadhav Vs. State of Maharashtra**⁵ has held that the anticipatory bail is an exceptional remedy and ought not to be granted in a routine manner. There must exist strong reasons for extending indulgence of this extraordinary remedy to a person accused of grave offences. It has been held that while called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence.

5 (2025) SCC OnLine SC 1489

14. Thus, what the Supreme Court reiterated is that the High Court while exercising the jurisdiction to grant anticipatory bail application has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence.

15. Thus, no case is made out for grant of Anticipatory Bail. The Anticipatory Bail Application is dismissed.

(MADHAV J. JAMDAR, J.)