



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 577 OF 2025

Swastika w/o. Ketan Malekar Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. L. Vairagade, Advocate for the Applicant.
Ms. T. H. Udeshi, A.P.P. for the Non-applicant/State.

CORAM : MRS. VRUSHALI V. JOSHI,J.

DATED : 03/10/2025.

. Heard.

2. The applicant has apprehension of arrest in Crime No.407/2025 registered at Police Station Risod, District Washim for the offences punishable under Sections 310(2), 308(2), 351(2) of the Bharatiya Nyaya Sanhita, 2023.

3. The case of the prosecution in brief is as under :

The informant Anil Shankarrao Gaikwad filed report and made allegations that on 27.04.2025 at about 7.30 p.m. when he was proceeding from Hingoli to Mehkar by his Car bearing No. MH-31-P-7630 at about 8.30 p.m., when he reached at Mungsaji Nagar, at that time, one lady stopped his vehicle and asked him whether he do not know her. At that time three bikers came, on which three male persons and one female were there. Out of them, four persons forcibly seated in the Car of the informant and said lady also seated with them. One of them given threat to kill him by showing knife and asked the informant to take the vehicle to the lonely place and snatched his gold chain. Then other assaulters came on the bike and they had taken

photographs along with that lady in their mobile and taken Rs.1,00,000/- from his car and demanded Rs.7,00,000/- by blackmailing him to make viral his photographs with that lady. On the basis of this report, the crime is registered against this applicant.

4. The learned Counsel for the applicant has stated that the main accused against whom the allegations of robbery are made, are released on bail. Sessions Court has granted anticipatory bail for a limited period to this applicant, which is not permissible. The applicant has relied on the judgment of the Hon'ble Apex Court in the case of *Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) And Anr.* reported in **(2020) 5 SCC 1**, wherein it is held as under :

“Normal rule should not be to limit the operation of the anticipatory bail in relation to a period of time.

With regard to anticipatory bail, the Court in Gurbaksh Singh Sibbia case held that the normal rule should be not to limit the operation of the order in relation to a period of time.

However, in an appropriate case and looking to the facts and circumstances of the case and the stage at which the pre-arrest bail application was made, the court concerned can limit the operation of the order in relation to a period of time. In such a situation, the life of the order under Section 438 CrPC granting bail can be curtailed. Some precedents erroneously held that the order of “anticipatory bail” has to be necessarily limited in time-frame. It cannot be disputed that the decision in Gurbaksh Singh Sibbia,

(1980) 2 SCC 565 is a Constitution Bench decision which is binding unless it is upset by a larger Bench than the Constitution Bench. Therefore, precedents which hold that the life of the order under Section 438 CrPC cannot be curtailed is not a correct law. The decision of in Salauddin Abdulsamad Shaikh, (1996) 1SCC 667 which takes an extreme view that the order of “anticipatory bail” has to be necessarily limited in time-frame is also not a good law and is against and just contrary to the decision in Gurbaksh Singh Sibbia case.”

It is further observed in clause No.7.6

as under :

“7.6. Thus, considering the observations made by the Constitution Bench of this Court in Gurbaksh Singh Sibbia [(1980) 2 SCC 565], the court may, if there are reasons for doing so, limit the operation of the order to a short period only after filing of an FIR in respect of the matter covered by order and the applicant may in such case be directed to obtain an order of bail under Sections 437 or 439 of the Code within a reasonable short period after the filing of the FIR. The Constitution Bench has further observed that the same need not be followed as an invariable rule. It is further observed and held that normal rule should be not to limit the operation of the order in relation to a period of time. We are of the opinion that the conditions can be imposed by the court concerned while granting pre-arrest bail order including limiting the operation of the order in relation to a period of time if the circumstances so warrant, more particularly the stage at which the “anticipatory bail” application is moved, namely, whether the same is at the stage before the FIR is filed or

at the stage when the FIR is filed and the investigation is in progress or at the stage when the investigation is complete and the charge-sheet is filed. However, as observed hereinabove, the normal rule should be not to limit the order in relation to a period of time."

5. The custodial interrogation of this applicant is not necessary. She is falsely implicated in this case. She has attended the Police Station when she was on bail for a limited period. Hence, prayed to protect the applicant by granting anticipatory bail.

6. The learned A.P.P. opposed the application stating that the antecedents are there. She is closely in contact with the co-accused. The C.D.R. shows that she is regularly connected with the co-accused Bablu Tayade and Vijay, who are the main accused in this crime. These persons extorted money by taking photographs with this lady. The learned A.P.P. has made submission that the judgment on which the applicant has relied, wherein it is mentioned that it is a normal rule, but the Sessions Court has granted anticipatory bail for a limited period. Considering the peculiar circumstances, the applicant was protected for a limited period for the purpose of an examination. Other co-accused are released on regular bail. The custody of this applicant is necessary for recovery of the video recording and as the *modus operandi* is same, hence prayed to reject the application.

7. Heard both the learned Counsel for the respective parties.

8. The applicant was earlier protected by granting anticipatory bail for a limited period. After going

through the judgment of Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) And Anr. (*supra*), it appears that the wording is normally it is not granted for limited period, however, in a peculiar circumstances, she was protected to appear for D.Ed. Exam.

9. The Sessions Court after considering the documents on record and considering the say, has rejected the application. The applicant is habitual offender. The *modus operandi* is same. This Court has not granted *ad interim* protection.

10. Considering association with the main accused, the custodial interrogation of this applicant is necessary. Hence, the application is rejected.

(MRS. VRUSHALI V. JOSHI, J.)