

Reserved On : 31/07/2025
Pronounced On : 06/08/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO.
24662 of 2024**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Approved for Reporting	Yes	No

HIRENBHAI MAHENDRABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

DARSHIT R BRAHMBHATT(8011) for the Applicant(s) No. 1
MR HARDIK SONI, APP for the Respondent(s) No. 1
MR DEVAN PARIKH, SENIOR ADVOCATE WITH MR SHRENIK R
JASANI(9486) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV JUDGMENT

1. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.
2. By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicant has prayed for anticipatory bail in the event of arrest in connection with the FIR being C.R.No.11204033240194 of 2024 registered with the Limbasi Police Station, District Kheda for

the alleged offences as mentioned in the FIR.

3. Heard learned advocate Mr. Darshit Brahmhatt for the applicant, learned APP Mr. Hardik Soni for respondent No.1 - State and learned Senior Advocate Mr. Devan Parikh assisted by learned advocate Mr. Shrenik Jasani for the original complainant.
4. Learned advocate Mr. Darshit Brahmhatt appearing for the applicant submits that as per the case of the prosecution, the incident is occurred during the period between 01.03.2023 to 30.09.2024, whereas, FIR is registered on 24.11.2024 against two accused persons. Thus, there is delay of nearly 2 months in registering the FIR and there is no whisper in the entire body of the FIR about the cause of delay in registration of the FIR. The name of the applicant is shown at serial No.2. The complainant herein is the employer and accused No.1 is his employee. The sum and substance of the allegations levelled against the accused No.1 is that he was managing the affairs of the rice mills of the ownership of the complainant. He further submits that for the purpose of carrying out any bank transactions, the OTPs were received by the complainant on his mobile phone, which he used to give it to the accused No.1 and after entering the OTPs, transactions were taken place between the parties. Therefore,

whatever transactions took place during the period in question, were well within the knowledge of the complainant. He further submits that in fact complainant is the owner of two rice mills and by mortgaging both the mills, loan from a nationalized bank was taken and as the complainant could not be able to make the repayment of the said loan within the time frame scheduled, appropriate proceedings have been instituted by the bank and the accounts of both the mills have gone into NPA. Thereafter, on the basis of the action initiated by the bank, the premises of both the mills have been sealed by the competent authority. Those particular facts have not been narrated by the complainant in the body of the FIR and there was suppression of material facts on the part of the complainant at the time of registration of the FIR. He further submits that in fact one another FIR has been filed by the wife of the complainant herein against another two persons and those two persons have been arraigned as accused in the capacity of Manager, out of which, one accused has already been enlarged on anticipatory bail and another accused has been enlarged on regular bail. Thus, a well designed plan is organized by the husband and wife with a sole intent to get out from the liability of repayment of loan amount of the Bank and therefore accused No.1 is

made scapegoat by the complainant as he is the employee of the complainant. It is alleged against the applicant that he being the owner of the transport company, connived with the accused No.1 and abetted the accused No.1 in commission of crime. He submits that applicant is innocent and not directly or indirectly connected with the commission of crime and he has wrongly been dragged into the offence by the complainant. Thus, considering the aforesaid factual aspects, this is a fit case wherein anticipatory bail application of the applicant is required to be entertained.

5. Learned advocate Mr. Darshit Brahmhatt further submits that in fact within no time, two FIRs have been registered by the husband and wife before the same police station. They are having very close connection with the police officer and said fact is also found out from the documents available on record. He further submits that along with the affidavit of the original complainant for opposing the present application, statements of the witnesses have been placed on record despite the fact that the charge-sheet is not filed. He further submits that during the pendency of the investigation and before filing of the charge-sheet, the statements of the witnesses have been supplied to the complainant by the investigating officer

and therefore, considering the said fact, the Coordinate Bench of this Court has granted interim protection to the applicant. It is an admitted position of fact that complainant in a criminal matter typically gets access to the investigation papers after filing of the charge-sheet before the competent Court but in the instant case, the situation is altogether different and with a sole intent to give undue favour and provide safeguard to the complainant to get out from his aforesaid liability, this kind of facility is extended to the complainant by the investigating officer. He further submits that role of the applicant is lesser than that of the accused persons of another FIR and when those accused persons have been enlarged on anticipatory and regular bail, applicant may also be enlarged on anticipatory bail by imposing suitable terms and conditions.

6. Present application is strongly objected by learned APP Mr. Hardik Soni for the respondent - State. Learned APP Mr. Soni submits that accused No. 1 and applicant are the close relatives. It is the specific case of the complainant that accused No.1 was serving as an accountant in the rice mill of the complainant since last 14 years and as a reliable and trustworthy person, complainant has given the passwords of his various banks accounts to the said accused.

Thus, in absence of the complainant, the accused No.1, in connivance with the applicant, has misappropriated more than Rs. 80 lakh. The investigating officer concerned has collected number of documents and materials which clearly go on to show that accused No.1 is directly involved in the commission of crime. Not only that the applicant is close relative of accused No.1 and he is engaged in the business of transportation and number of fake vouchers and bills have been issued by the transport company of the applicant and amount has also been credited in the account of the transport company of the applicant, despite the fact that the truck of the applicant had never entered into the premises of the complainant's rice mills to collect the goods. Thus, huge volume of amount has been misappropriated by both the accused persons in connivance with each other by defrauding the complainant. Thus, the basis, essential and requisite ingredients to constitute the offence of criminal breach of trust are clearly made out in the body of the FIR and from the materials collected by the Investigating Officer. Therefore, this is a fit case, wherein, this Court may not have to exercise its discretion in favour of the applicant. He, therefore, submits that the application may not be entertained.

7. Learned Senior Advocate Mr. Parikh appearing on behalf of the original complainant has objected present application with vehemence and submitted that the applicant has tried to prejudice the Court, specifically stating that the bank accounts of the complainant had gone into NPA and premises have been sealed. All those things have been done due to certain illegal actions taken by the accused persons. He further submits that in fact complainant was not paying regular visits to his mills and by putting full faith upon the accused No.1, he had handed over passwords of his various bank accounts to the said accused and also shared OTPs as well only with an intent to get smoothness in the affairs of the firm. He further submits that complainant has not taken much interest in the transactions of the bank and day to day affairs of the firm by keeping full faith upon his employees. However, subsequently, it has come to the notice of the complainant that accused persons have, in connivance with each other, committed a breach of trust and thereby misappropriated huge volume of amount of Rs.80 lakh and therefore FIR has been registered against them. He further submits that in fact after the registration of the FIR, name as well as role of other accused persons have also come on surface and therefore they have been arraigned as accused. The complainant

has also made a detailed inquiry about the act, action and conduct of the accused No.1 by scrutinizing other documents and came to know that the scam is of large magnitude and number of other bogus entries have been made in the register and based upon the invoices and vouchers entries were being made and payments had been credited in the accounts of number of entities despite the fact that there was no business transaction took place between the parties. He referred and produced entire compilation of documents and submitted that in fact the documents are already supplied to the investigating officer and there are all possible chances that some other skeletons in a cupboard would be found out. Learned Senior Advocate Mr. Parikh has emphatically submitted that in fact certain mistakes might have been committed by the complainant by putting blind trust upon his employees, due to which, he has to face certain consequential legal proceedings but due to the said sequence of events of incident, the applicant and other accused persons cannot be absolved automatically from the offence of criminal breach of trust committed by them in connivance with each other and they have to face the consequences for their illegal and unauthorized act.

8. Learned Senior Advocate Mr. Parikh further

submits that the co-accused, who has been apprehended by the investigating officer, has already been released on bail by the learned Trial Court after lapse of period of 70 days. The role of the present applicant is graver than the other accused persons. Hence, the application may be dismissed.

9. Lastly, learned Senior Advocate Mr. Parikh has fairly submitted that in fact complainant is not aware about the legal proceedings and at the time of objecting the anticipatory bail application of the applicant before the learned Trial Court, the investigating officer has filed an affidavit and supplied certain documents to the Court specifically stating that name as well as role of other accused persons is clearly found out. Therefore, complainant had demanded the said set of papers from the investigating officer, and in turn, the investigating officer had with bona fide intention supplied the said papers to the complainant. The said fact is already narrated by the complainant by way of filing separate affidavit.
10. Having heard the learned advocates appearing for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the

Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) the nature and gravity of the accusation; (ii) the antecedents of the applicants including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

11. It is required to be noted that normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. No doubt this Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.
12. It is well settled that an application preferred for anticipatory bail is an exceptional remedy to be granted in exceptional cases. The parameters and considerations governing the grant of anticipatory bail have been explained by the Hon'ble Supreme Court in number of cases. At this

stage, I would like to refer and rely upon the law laid down by the Hon'ble Supreme Court in the case of (i) **State Rep. by the CBI V/s Anil Sharma** reported in **1997 (7) SCC 187**, (ii) **Adri Dharan Das V/s State of W.B.** reported in **2005 (4) SCC 303** (iii) **P. Chidambaram V/s Directorate of Enforcement** reported in **AIR 2019 SC 4198**, wherein the Hon'ble Supreme Court has held as under:

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.

Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so

far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

Having regard to nature of allegations and stage of investigations, held investigating agency must be given sufficient freedom in process of investigation. Appellant not entitled to anticipatory bail as the same would hamper the investigation".

13. In case of **Pratibha Manchanda and another Vs. State of Haryana and another reported in (2023) 8 SCC 181**, the Hon'ble Apex Court in Paragraph No.21, observed as under:-

"21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

14. At this stage, it is required to be noted that as this application has been preferred under the provisions of Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail, I would like to refer the decision of the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors**, reported in **(2011) 1 SCC 694**, more particularly Paragraph Nos.14 & 112, which read as under :-

"14. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till

he is found guilty by the court.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail: The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; The possibility of the applicant to flee from justice; The possibility of the accused's likelihood to repeat similar or the other offences. Whereas the accusation have been made only with the object to injuring or humiliating the applicant by arresting him or her. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case."

15. Now coming back to the facts of the case, it is the specific case of the complainant that accused No.1 is his employee and he is serving since last 14 years. The accused No.1 was managing the affairs of the firm of the complainant and passwords of various bank accounts were also given to the said accused as complainant was not paying regular visit at the firm and almost all the bank transactions were managed by the accused No.1. Even the OTPs received by the complainant for bank transactions, he shared them with the accused No.1 for the purpose of smooth functioning of the firm. It is the specific case of the

complainant that both the accused persons have, in connivance with each other, committed the offence of criminal breach of trust by misappropriating more than Rs.80 lakh. Hence, the instant FIR is lodged against them. It is the case of the applicant that complainant has taken huge amount of loan by mortgaging his rice mills and as the complainant could not be able to make the repayment of the said loan amount, with a view to absolve from the said liability, he created false story by dragging the applicant in the alleged offence. In the opinion of this Court, the said contention taken by the learned advocate for the applicant is misconceived in view of the facts of the present case. I have also gone through the contents of the FIR as well as other materials relied upon and referred by the learned APP as well as learned Senior Advocate Mr. Parikh for the original complainant during the course of hearing of this application which *prima facie* suggest involvement of the applicant in the commission of crime. Therefore, considering the facts of the present case as also the fact that investigation is still going on, the present application deserves to be rejected.

16. The Hon'ble Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.**, reported in **2022 SCC OnLine SC 1529** held that merely because custodial interrogation is not required, by

itself, could not be a ground to grant anticipatory bail. The first and the foremost thing the Court, while hearing the anticipatory bail application, has to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

"It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation. Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. 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 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 custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

17. Thus, while taking into consideration the ratio laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre (supra)** as also ratio laid down in other decisions as stated above, I have gone through the contents of the FIR, which is placed on record and also considered the affidavit of the investigating officer filed before the learned Judge concerned opposing the bail application preferred by the applicant. Upon going through the contents of the FIR, it appears that *prima facie* case is made out against the applicant and material collected so far suggests the involvement of the applicant in the commission of crime.
18. For the foregoing reasons, having regard to the facts and circumstances, peculiar to the instant case, as have been analyzed hereinabove, the applicant has failed to make out a special case for exercise of power to grant anticipatory bail and considering the facts and parameters, necessary to be considered for adjudication of

anticipatory bail, this Court does not find any exceptional ground to exercise its discretionary jurisdiction under Section 482 of the BNSS to grant anticipatory bail. More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 482 BNSS, is somewhat discretionary in character and it is to be exercised with caution in exceptional cases.

19. Hence, the present application seeking anticipatory bail, being devoid of merit, is hereby dismissed. Notice is discharged.
20. It is found out from the record that original complainant has filed an affidavit to oppose the anticipatory bail application of the applicant and along with the said affidavit, he has supplied the statements of the witnesses. Therefore, the Coordinate Bench of this Court has inquired about the status of the matter and came to know that the charge-sheet is not filed. Therefore, learned Senior Advocate Mr. Parikh for the original complainant had made a statement that complainant would like to explain from where did the complainant had received the copies of the statements of the witnesses, by way of filing an affidavit. Thereafter, the complainant has filed an affidavit and bare perusal of the contents of the said affidavit clearly go on to show that the investigating officer concerned had supplied the copies of the statements of the witnesses on

demand being made by the complainant. It is an admitted position of fact that investigating officer concerned is the master of the investigation and it is absolutely prerogative of the investigating officer to carry out the investigation in particular direction. It is settled proposition of law that after registration of the FIR, the role of the complainant gets over and the ball is in the court of the investigating officer and except the investigating officer, none of the parties gets access to the police papers (investigation papers) and even the complainant in a criminal matter typically gets access to the investigation papers after filing of the charge-sheet before the competent Court. The aforesaid settled proposition of law should have been well within the knowledge of each and every investigating officer. In spite of that, before the registration of the charge-sheet before the competent Court and during the course of investigation, the investigating officer concerned had supplied copies of the statements of the witnesses to the complainant. Thus, in the opinion of this Court, the said act and action of the investigating officer concerned clearly goes on to show that either he is oblivious upon the fact of the settled proposition of law and/or with some ulterior motive, he has acted in a particular manner.

Both the eventualities, prima facie, seem to be very dangerous and therefore this Court is of the opinion that the said practice adopted by the police is required to be curbed at the initial stage. Therefore, this Court is of the opinion that a copy of this order is required to be sent to the Superintendent of Police concerned for taking necessary action against the erring police officer/s. The Director General of Police is also directed to issue circular in this regard and inform the Police Commissioner/Superintendent of Police of all the Districts to impart training for awareness of the police officers in this regard with a sole intent to prevent this kind of incident in future. The Superintendent of Police concerned is also directed to submit compliance report as regards the action taken against the erring police officer before this Court.

21. Needless to say that the observations and findings made hereinabove are limited to the decision of this pre-arrest bail application, and shall not influence in any other proceedings arising out of the impugned FIR.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI