

**IN THE COURT OF ADDL.SESIONS JUDGE AT PAITHAN**  
**DISTRICT AURANGABAD**

MHAU170002152026



**Cri. Bail Application No. 50 of 2026**  
**Vaibhav s/o Vardhaman Kala Vs**  
**The State of Maharashtra.**  
**Crime No. 382/2024, P.S. Pachod, Tq.**  
**Paithan, Dist. Chhatrapati**  
**Sambhajinagar.**  
**Offence u/s 74, 75 and 352 of BNS, 2023.**

**ORDER BELOW EXH.01**

01] This is an application under-section 482 of the Bharatiya  
Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail by  
applicant namely Vaibhav s/o Vardhaman Kala.

02] The Investigating Officer has opposed the application by  
filing his reply vide Exh. 07. The informant has also opposed the  
application by filing her say vide Exh.08.

03] Heard learned counsel for the applicant and learned APP  
for the State. Perused the application, say and all the documents  
produced on record. The copy of charge-sheet reveals that the  
Investigating Officer issued notice u/s. 35(3) of BNSS indicating that  
the arrest of applicant was not necessary for the purpose of  
investigation and that the investigation has been over. It further  
appears that the learned Magistrate took cognizance by issuing  
summons to applicant. It further appears that in response to the  
summons, the applicant appeared before the learned Magistrate in the

morning session. It further appears that the informant applied before the Magistrate for taking the applicant in custody. It further appears that the applicant left the Court of Magistrate apprehending that he may be taken into custody as per the request made by the informant. Finding that the applicant is absent in afternoon session, the learned Magistrate issued NBW against the applicant. Apprehending arrest in execution of said NBW, the applicant is before this Court for anticipatory bail.

04] The copy of charge-sheet reveals that the charge against the applicant is of commission of an offence punishable u/s. 75 of BNS, which is triable by Court of Session. It is the submission of learned counsel for applicant that since an offence u/s.75 of BNS is triable by Court of Sessions, Magistrate has no power to entertain the application for bail u/s. 483 of BNSS and therefore, there was an apprehension in the mind of applicant that he would be remanded to magisterial custody and therefore, the applicant absented himself in second session compelling the learned Magistrate to issue NBW against him. The submission of learned counsel for the applicant clearly suggests that he was under misconception of law and due to that, the applicant is before this Court seeking anticipatory bail. I am aware that while deciding bail application u/s. 482 of BNSS, the Court cannot exercise revisional jurisdiction and therefore forthcoming observations may not be treated to be in revisional jurisdiction.

05] In the case in hand, the Investigating Officer completed investigation without arresting the applicant and he has also communicated the status of the accused in the charge-sheet itself that he has issued notice u/s. 35(3) of BNSS. The learned Magistrate took cognizance upon the said charge-sheet and issued summons to the applicant. In pursuance of summons, the applicant appeared before the learned Magistrate in morning session. The informant/victim also appeared before the learned Magistrate with a request to remand the applicant to custody. As noted earlier, due to misconception of law, the applicant appearing to have absented himself in second session and consequently, the learned Magistrate passed order of issuance of NBW against applicant on the application moved by the informant u/s. 232(a) of BNSS. The relevant portion of Section 232 reads as under :

**232. Commitment of case to Court of Session when offence is triable exclusively by it –** When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall -

(a) commit, after complying with the provisions of section 230 or section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;

06] The words ‘subject to the provisions of this Sanhita relating to bail’ used in above-referred clause clearly indicates that the Magistrate has to consider the provisions relating to bail while

committing the case to the Court of Session. Section 91 of BNSS also relates to bond and bail bond for appearance. The Magistrate can take recourse of Section 91 of BNSS particularly when the Investigating Officer decides not to arrest the accused during the investigation and submits the charge-sheet by issuing notice u/s. 35(3) of BNSS to the accused. For easy reference, I would like to quote section 91 of BNSS which reads as :

**91. Power to take bond or bail bond for appearance –**

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.

07] Another recourse available to the Magistrate is given in second proviso to section 232 of BNSS, which reads as :

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorized by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case.

08] In the case in hand, the victim/informant filed application before the learned Magistrate for remanding the applicant/accused to custody and the learned Magistrate passed an order of issuance of NBW against the accused/applicant instead of forwarding the said application to the Court of Session. In such circumstance, it can be said that the applicant has reasonable apprehension of arrest in execution of NBW. The presence of

applicant is necessary before the learned Magistrate for committal of the case to the Court of Session and therefore, the learned Magistrate issued NBW against accused/applicant. It is not the case here that the applicant did not appear before the learned Magistrate in pursuance of summons and consequently NBW was issued against him. On the contrary, the applicant appeared before the learned Magistrate and due to misconception of law he absented himself in second session. The learned Magistrate has also not given any consideration to the second proviso of Section 232 of BNSS before passing order of NBW upon the application moved by the victim/informant. In such circumstance, the liberty of applicant needs to be protected. Hence, I pass the following order.

**ORDER**

- 01] Application Exh.01 is allowed.
- 02] In the event of arrest in execution of NBW, applicant namely Vaibhav s/o Vardhaman Kala. be released on execution of P.R bond of Rs. 15,000/- [Rs. Fifteen Thousand only] and on furnishing surety in like amount on condition that the applicant shall attend the concerned Court of Judicial Magistrate F.C. Paithan on given dates.
- 03] Inform to the concerned police station and concerned Court of Judicial Magistrate F.C. Paithan.

Date: 28.03.2026

(R.D.Gadwe)  
Additional Sessions Judge,  
Paithan