MHTH060051802025

Order below Exh.1 in Criminal Anticipatory Bail Application No.2558/2025

1] This bail application is filed under section 482 of BNSS for grant of anticipatory bail to the applicants viz. **(1) Pradeep Vashumal Kishnani, and (2) Smt. Neha Pradeep Kishnani** for an offence punishable under sections 318, 316, 336, 338, 340 r/w. section 3(5) of Bharatiya Nyaya Sanhita, 2023 registered at Central Police Station, vide C.R. No.783/2025.

2] Perused the application. Heard Ld. A.P.P. for the State and Ld. Advocate for applicant.

3] A long standing family dispute, rounds of litigation and a fierce fight between two real brothers is the saga of present case.

4] According to the informant, their family is in the business of liquor distributorship since long. Considering the need of loan/cash credit, Partnership Deed was initially created between him and his father. In the year 2014 family arrangement took place and the entire family properties were equally divided between his father and his four brothers. At the same time i.e. in the year 2014 his younger brother (applicant no.1) shown his willingness to become partner in Pinku Traders. Accordingly a partnership deed was executed and he himself, his father and applicant no.1 became the partners. The entire affairs of the said business were monitored and executed by the applicant no.1 only. The applicant no.1 was looking after the entire business from 2014 to 2019. As the informant was having full faith on him he never cross-checked the money transactions and relevant documents i.e. income tax returns, balance-sheet and audit.

5] Meanwhile on 17.01.2019 the father of informant and applicant no.1 died. They both discussed about the future of business i.e. Pinku Traders Firm and partnership deed was reconstituted on 01.04.2019. Both of them become equal partners. As the informant was relying his brother applicant no.1 blindly, he played mischief and forged various documents including a partnership deed dated 01.04.2016. By way of said deed he entered the name of his wife in the business and thereafter deleted her name too. However, during the entire period of 2014 to 2019 he had siphoned huge money touching to 20 crores. Though he got to know about all his illegal activities he kept mum considering the relationship and possibility of withdrawal of distributorship from the liquor company. Since September, 2020 he was continuously pursuing applicant no.1 and his wife (applicant no.2) for return of aforesaid huge amount and every time they either give false promise or dogged him. Lastly he filed Civil Misc. Application No.57/2025 before the District Court, Thane seeking forensic audit and settlement of accounts. In the said proceeding, the applicant no.1 furnished one more document of partnership dated 25.10.2018 which was completely forged by him. Due to continuous betrayal, the informant lodged present complaint. On the basis of aforesaid allegations, an offence came to be registered bearing C.R.No.783/2025 at Central Police Station.

6] It is argued on behalf of applicants that, they have not committed any offence as alleged. They are falsely implicated in the present matter. According to them, the informant has filed this complaint out of frustration as he could not get any relief in the proceeding filed before District Court. Nevertheless, though he approached before Hon'ble High Court, no any relief was granted to him. He, thereafter, filed this complaint so as to harass or pressurize the applicants so that they shall fall pray to his illegal demands. He completely coloured a civil dispute (settlement of accounts) with this criminal offence. It is also argued that the complaint is filed regarding the alleged instances which took place from year 2014 to 2019. Thus, this FIR is filed after the delay of six years without any single line of justification. Nevertheless, during the first round of litigation the parties entered into mutual agreement and settled all their disputes including the monetary transactions. In the said MOU it was specifically mentioned that no any fresh dispute would be raised by the either party on the same ground. Despite such understanding this case is filed without any justification.

7] It is further argued that applicants are reputed persons. They are husband and wife. They are having permanent address. Nothing is to be seized or recovered from them. Their arrest is not at all warranted. They are ready to co-operate the investigation. They have even participated in it after receipt of notice by the investigation agency. They are ready to co-operate in future too. They are also ready to abide conditions, if any, imposed while granting bail. It is, therefore, lastly prayed that application be allowed.

8] The applicants also relied upon various case laws regarding settled principles of right to bail and protection of liberty of an individual. They are as follows :

[i] Jay Shri & Anr. Vs. State of Rajasthan, reported in 2024 ALL SCR (Cri) 254;

[ii] Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Ors., reported in 2024 ALL SCR (Cri) 1036;

[iii] Siddharam Mhetre Vs. State of Maharashtra, reported in AIR 2011 SC 312;

[iv] Arnesh Kumar Vs. State of Bihar, reported in (2014) 8 SCC 273;

[v] Satender Kumar Antil Vs. CBI, reported in AIR 2022 SC 3386.

9] Per contra, Ld. APP for the State and Ld. Advocate for intervenor strongly opposed the application. It is submitted that applicants are in habit of creating false and fabricated document.

They had used this modus previously too. In previous criminal case, when they could not get any relief, they had compromised the matter and rescued themselves. Once again they had indulged in creation of forged documents and thus their presence with police is utmost necessary. The custodial interrogation is very much necessary to discover their modus and recover the original forged documents including recovery of money. If the applicants would be granted bail, then the prosecution case could not be investigated properly. The applicants may also induce or pressurize the witnesses. They may destroy vital evidence. It is therefore prayed that application be rejected.

10] As far as previous criminal case is concerned, it cannot be overlooked that it had ended up in the quashing of FIR itself. Thus, it is not necessary to ponder much on those events.

11] Moving further, considering the peculiar circumstances, the bail application at hand requires appreciation on two different grounds i.e. legal as well as factual. As far as legal aspect is concerned, during the pendency of this bail the Investigation Officer had issued notice under section 35(3) of BNSS to both the applicants. This action requires appreciation on legal ground. While doing so, it is also equally necessary to refer observations of Hon'ble parent High Court in the case of ***Chanda Kochhar v/s. Central Bureau of Investigation and Oths.*** ***in Writ Petition No.378 of 2023 with Interim Application No.804 of 2023***.

12] As already discussed, during the course of investigation, the Investigation Officer gave notice under section 35(3) of the BNSS to both the applicants. In pursuance of the same, the applicant no.1 appeared before the Investigation Agency on four dates i.e. 1st, 2nd, 3rd and 6th January and his detail statement is recorded. The applicant no.2 also appeared before Investigation Officer personally and her statement is also recorded. Two different pursis to that effect are placed on record at Exhs.19 and 23.

13] Needless to say, the notice under section 35(3) of the BNSS is to be given in cases where the Investigation Officer is **not intending to arrest** the accused under section 35(1) of BNSS.

14] Sub section 5 of section 35 of the BNSS mandates to the receiver of the notice to comply the terms of the notice.

15] Sub section 5 of section 35 of the BNSS protects the receiver of the notice from arrest as long as he/she complies the notice and continue to comply with the conditions of the same.

16] Now these two facets i.e. Issuance of Notice under section 35(3) of BNSS and compliance of the same needs minute consideration. As the Investigation Officer serves notice it clearly shows that it had arrived to its prima-facie conclusion that arrest is not necessary or it do not intend to arrest the applicants. Next stage is complacence of notice and record shows that both the applicants have duly complied it. They had participated the investigation and their statements are also recorded.

17] Now, when the Investigation Officer is alleging that there is non-cooperation, it is not just a mechanical phenomenon. In that case Investigation Officer should demonstrate at least prima-facie that certain instruction were purposefully non complied. While apprising such allegation of non-cooperation, the court also need to keep in mind the ratio laid down in **Chanda Kochhar Case (Supra)**. The Hon'ble Parent High Court had specifically opined about the fundamental right of accused to keep silence which emanates from Article 20(3) of the Indian Constitution. The said right is given to the accused by the Constitution itself to save him/her from compulsory self incrimination.

18] To sum up with legal aspect, the Investigation Officer issued notice under section 35(3) of BNSS and the applicants have duly complied the same by appearing before investigation agency. The Investigation Officer also recorded their statements. All these instances occurred during the pendency of this bail application and thus there cannot be any mechanical arrest resulting into denial of personal liberty. In this case, when the applicants are participating the investigation, the Investigation Officer will have to abide requirements of section 35(5) and section 35(6) including obtaining such an order from the competent court before arresting the applicants for the offence mentioned in the notice.

19] As far as merits of the application on factual aspect apart from the legal aspect discussed above is concerned, both the parties including intervenor/informant are heard at length. It is admitted position that during previous round of dispute the parties have entered into mutual agreement on 25.01.2021. In view of different clauses enumerated in the said mutual agreement, the parties admitted that they would not rack-up old events including monetary disputes. Even it was agreed in between them that any future dispute would be referred to the Arbitrator. Despite it, a Civil Misc. Application is filed before the District Court at Thane and informant could not secure any relief to it. He then approached to the Hon'ble High Court too, but no any relief was granted and matter is now referred to an independent Arbitrator. Only when the informant failed to get any relief, the present criminal case came to be filed.

20] I have gone through the FIR minutely. The sum and substance of the entire FIR is alleged forgery of documents used for siphoning of huge amount by the applicants from the year 2014 to 2019. The informant also tried to give justification that he had not initiated any action promptly as there were chances of withdrawal of distributorship from the liquor company. Needless to say, this is very selective justification. Only because the applicant thought of monetary loss he selectively kept mum for so many years. The dates which are referred in the FIR also shows that applicant got the knowledge of so called forgery by way of an email dated 27.08.2020. He himself admitted in the last para of his complaint that since September, 2020 he is pursuing his demand with the applicants. Meaning that, this belated FIR is filed after almost five years. This is completely unacceptable. A selective pick and choose policy adopted by the informant prima-facie creates doubt.

21] At last but not least, the entire allegations are based on certain documents. Today the applicants have furnished a pursis (Exh.24) submitting that they would handover one original document which is in their possession. So also, as already discussed the applicants have shown their participation in ongoing investigation. The documents relied by the parties are already placed in the proceeding going on before the District Court. The say of Investigation Officer is majorly seeking custody for recovery of documents and it do not fully justify grant of presence of applicants with them that too for custodial interrogation. It is thus a fit case where liberty of an individual shall be protected. As far as apprehension of prosecution is concerned, stringent bail conditions would suffice the purpose. Hence order :

ORDER

1] Application is allowed.

2] In the event of arrest of applicants viz. **(1) Pradeep Vashumal Kishnani, and (2) Smt. Neha Pradeep Kishnani,** be released on bail for an offence punishable under sections 318, 316, 336, 338, 340 r/w. section 3(5) of Bharatiya Nyaya Sanhita, 2023 registered at Central Police Station, vide C.R. No.783/2025 on executing P.R. Bond of Rs.1,00,000/- (Rupees One Lakh Only) along with one or two sureties each of the like amount on the following conditions:-

a) They shall not hamper or tamper the prosecution evidence.

b) They shall co-operate the investigation agency, as and when required.

c) They shall appear before Investigation Officer on every Sunday of month in between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet or 60 days from the date of order.

d) They shall not commit any offence while on bail.

e) They shall produce their Adhar Card, any document of permanent address as well as mobile number, if any, to disclose their permanent place of residence at the time of furnishing surety in the court.

3] Breach of any condition of bail would be liable for cancellation of liberty given.

4] Inform PSO of concerned police station.

DISTRICT COURTS MAHARASHTRA
सत्यमेव जयते

Digitally signed by PRADEEP RAMESH ASHTURKAR
Date: 2026.01.20 12:44:30 +0530

Kalyan.
19.01.2026

(P. R. Ashturkar)
Additional Sessions Judge,
Kalyan.