

Reserved On : 24/12/2025
Pronounced On : 05/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 26922
of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

Approved for Reporting

Yes

No

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STATE OF GUJARAT

Appearance:

MR. YATIN OZA, LD. SR. ADV. WITH MR. ADITYA A GUPTA(7875) for the
Applicant(s) No. 1

MR. JAL UNWALLA, LD. SR. ADV. WITH MR BOMI H SETHNA(5864) for the
Respondent(s) No. 1

MR. SOHAM JOSHI, LD. ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV JUDGMENT

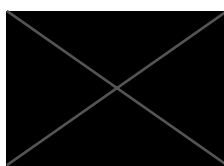
1. Rule returnable forthwith. Learned APP waives service of notice of rule for respondent – State of Gujarat.
2. By way of the present application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”), the applicant has prayed for anticipatory bail in the event of arrest in connection with the FIR being C.R. No.11191011250327 of 2025 registered with DCB Police Station, Ahmedabad City for the alleged offences as mentioned in the FIR.
3. The glimpse of the allegations made in the FIR is that the

present applicant (husband) along with the other two co-accused (father-in-law and mother-in-law), dodged the complainant by first taking her into confidence that if she would get married with the applicant, they will take great care of her, and thus by giving such kind of false assurance, the applicant ultimately got married with the complainant, however, soon after the marriage, all the accused persons started demanding dowry from the complainant, and that apart, the applicant as well as the father-in-law were physically abusing the complainant against her will and wish and making unreasonable demands, and that apart, also subjected her to mental and physical harassment, and ultimately all the accused persons, acting in concert, thrown her out from her matrimonial home on 20.04.2025. With this sort of allegations, the present FIR has been registered.

4. Thus, apprehending his arrest pursuant to the registration of the aforesaid FIR, the applicant preferred anticipatory bail before the trial court, however, the said application has not been entertained by the trial court.

5. Being aggrieved, the applicant is here before this Court with the present application.

6. Learned senior counsel Mr. Yatin Oza assisted by learned advocate Mr. Sudhir Walia, learned advocate Mr. Aditya Gupta, learned advocate Mr. Harshal Baradia and learned advocate Ms. Neeharika Walia appearing for the applicant submits that the allegations made in the FIR are of such a nature, for which, custodial interrogation of the applicant at this stage is not necessary. He further submits that the applicant will keep himself available during the course of investigation as well as the trial proceedings and will not flee from justice. He further submits that



total three persons have been arraigned as accused in the FIR, wherein the present applicant has been shown as accused No.1. Learned senior counsel Mr. Oza also submits that the incident in question took place during the period between 25.02.2022 and 20.04.2024, for which, the FIR came to be lodged on 14.10.2025, and as such, there is a gross delay of almost one and half years in registering the FIR, without there being any explanation worth the name about such a huge delay in registering the FIR. He further submits that the dispute involved in the present matter appears to be matrimonial in nature between husband and wife. He also submits that the applicant got married with the complainant on 05.02.2022 at New Delhi as per Hindu rites and rituals. He further submits that this is the second marriage of the applicant with the complainant, and the applicant earlier got married with one Ms. [REDACTED], which marriage was dissolved by way of decree of mutual consent divorce in the year 2020, and out of the first marriage, the applicant has three children, namely, [REDACTED], [REDACTED] and [REDACTED], who are in the custody of the applicant and are living with their grandparents, i.e, the co-accused in the present matter. Learned senior counsel Mr. Oza further submits that the allegations of demand of dowry by the applicant from the complainant are absolutely false, concocted one and an afterthought as the applicant is a millionaire having his business of [REDACTED] [REDACTED] [REDACTED] at Gurugram.

7. Learned senior counsel Mr. Oza further submits that the applicant has not suppressed anything from the complainant, even about his first marriage. He further submits that the applicant and the complainant came in contact with each other through a WhatsApp group and had been in touch with each

other for almost a year, and during that period, the applicant had informed the complainant about his first marriage and three children born out of the said marriage, and as such, by no stretch of imagination, it can be said that the applicant herein has lured, enticed or cheated the complainant. Even, the complainant also shown her desire to go through the divorce papers of the applicant of his first marriage, which was also provided by the applicant to the complainant, and after that, the marriage took place between them. Thus, it is apparent on the face of the record that the complainant was well aware about the first marriage of the applicant and the three children out of the same. He further submits that it was the second marriage of the applicant, and therefore, the marriage ceremony was so simple without any pomp show, which was attended by hardly 10 to 12 persons including the parents of the complainant, and the same was solemnized at the Guest House of the applicant at Gurugram and the entire expenses were borne by the father of the applicant. No dowry was ever demanded or given at the time of marriage of thereafter.

8. Learned senior counsel Mr. Oza further submits that the present FIR is nothing but a counterblast to the divorce petition filed by the applicant in the Family Court, Gurugram (Haryana) on 30.05.2024 being filed with an oblique and ulterior motive to falsely drag the applicant and his parents in the present matter with a view to settle personal scores and grudges against the applicant and his family members. The allegations made by the complainant are vague and general in nature without mentioning any specific details including date, time, place or manner of commission of alleged offence. He further submits that pursuant to the registration of the FIR, the applicant had appeared before

the investigating officer and supplied all the documents and materials as asked by the investigating officer, and as such, it can safely be said that the applicant has extended full cooperation to the investigating officer. Learned senior counsel Mr. Oza also submits that although very serious allegations have been levelled against the applicant, yet the complainant has failed to produce any material in support of the said allegations. On the contrary, the applicant has produced ample material to falsify the said allegations. He further submits that so far as the allegations under Section 376, 354-B and 354 are concerned, the same are against the father-in-law and he is not the party to the present proceedings. So far as rest of the offences are concerned, the maximum punishment therein is upto seven years. Learned senior counsel Mr. Oza further submits that the most important evidence to prove that nothing sort had happened, as alleged, he has placed on record the photographs of the couple, where they are seen happy and enjoying each other's company without any fear, which are also part of record before the learned Sessions Court, however, the same have not been considered by the trial court while rejecting the anticipatory bail application of the applicant. The relevance of this photographs is for an example that the complainant has alleged that in the month of January, 2024, her father-in-law came to her room and misbehaved with her and even tried to remove her clothes, however, some of the photographs are of the month of January, 2024, where the complainant, applicant and other residents of the society are celebrating Lohri festival. He submits that if such an unfortunate incident had taken place with a woman, she cannot get over the shock and would have immediately left the matrimonial house and reported the matter to her parents and police. Learned

senior counsel Mr. Oza further submits that the complainant is highly educated lady, a law graduate and a Chartered Accountant, and she is fully aware of her legal rights and it is not believable that she would have been put under threat, so as to prevent her from approaching the police or her parents, especially when it is not disputed that she very frequently used to visit Ahmedabad for the business purposes.

9. Learned senior counsel Mr. Oza further submits that the applicant is a business tycoon and multi-millionaire, residing in a huge bungalow and is living a luxurious life. Even after the marriage, the applicant and the complainant frequently used to travel abroad on family holidays, and all those expenditures were borne by the applicant, and as such, the allegation of demand of dowry by the applicant is not digestable. He further submits that the complainant has also falsely alleged that she brought gold ornaments, 10 kg silver utensils and approximately 15 lakh cash during various festivals and ceremonies, as not a single piece of evidence has been produced by the complainant to substantiate her aforesaid claim. No such gold ornaments or silver utensils were ever given by the complainant to the applicant or his parents, and it is purely an afterthought and concocted story to falsely implicate the applicant and his family members. Moreover, there is no eye-witness to the alleged incident, as the same had happened within the four corners of the house, and as such, in the absence of any cogent and corroborative piece of evidence, the allegations made in the FIR cannot be considered as a gospel truth. Furthermore, the stand taken by the complainant that the earlier wife of the applicant had also levelled the similar allegations against the applicant cannot be taken into

consideration in the present proceedings, as those proceedings did not reach to its logical conclusion due to the settlement arrived at between them, and the same was withdrawn by the complainant therein. He further submits that so far as the WhatsApp messages are concerned, the complainant has selectively chosen to place on record only those messages which were more in the nature of reaction on the part of the applicant to the abusive and vulgar language used by the complainant towards him and his parents. The complainant has not placed the entire conversation between the applicant and the complainant which would go to show as to under what circumstances and under what conditions, the said conversation had taken place. The messages referred to in the order of the Sessions Court are selective and not the complete chat between the applicant and the complainant. As a matter of fact, these messages have to stand the test of security under Section 65-B of the Indian Evidence Act during the trial and ought not to have been relied upon at the time of considering the application for grant of bail, as this has resulted into mini-trial, which is not permissible while deciding the anticipatory bail application.

10. Learned senior counsel Mr. Oza further submits that the parents of the applicant are the senior citizens and are suffering from various ailments. The father of the applicant has undergone cancer surgery of mouth and also open heart surgery, and the mother of the applicant is suffering from acute arthritis, they are not able to carry out their routine activities without the assistance, and the said fact is substantiated by the medical papers produced along with the memo of the application. To buttress his submissions, learned senior counsel Mr. Oza has relied upon the following decisions;

- (i) The decision of the Hon'ble Apex Court in the case of Mahmood Ali & Ors. vs. State of U.P. & Ors., Criminal Appeal No.2341 of 2023, decided on 08.08.2023;
- (ii) The decision of the Hon'ble Apex Court in the case of Harshil Sumeru Amin vs. The State of Gujarat & Anr., Criminal Appeal No.5094 of 2025, decided on 01.12.2025;
- (iii) In the case of Kingsley Ofobike vs. Narcotics Control Bureau, 2023 SCC Online Del 4427;
- (iv) In the case Bharat Chaudhary vs. Union of India, (2021) 20 SCC 50;

11. In such circumstances, referred to above, learned senior counsel Mr. Oza prays that there being merit in the present application, the same be allowed and the applicant be enlarged on anticipatory bail.

12. But, the present application has been vehemently opposed by learned senior counsel Mr. Jal Unwalla assisted by learned advocate Mr. Bomi Shethna appearing for the original complainant. He submits that the allegations made against the applicant and his parents are very serious and shameful in nature, which he even can't read loudly in the open Court. Learned senior counsel Mr. Unwalla further submits that currently the original complainant is residing with her senior citizen parents who are octogenarians and with her sister. This is the first marriage of the complainant and second marriage of the applicant. The applicant is also having three children. He also submits that the offences as alleged are of the most serious nature involving systematic physical violence, mental cruelty,

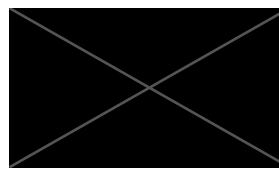


sexual abuse, dowry harassment, death threats, criminal intimidation and attempted rape spanning over a period of more than two years. Learned senior counsel Mr. Unwalla further submits that the complainant was subjected to continuous physical assault and mental torture not only by the three accused persons but also by the sister and daughter of the applicant throughout her matrimonial relationship. There are multiple incidents of beating, strangulation, head being banged against walls throughout the married life. Not only that, the applicant herein attempted to burn the complainant with lit cigarettes on her private part and chest. He further submits that after the marriage, the complainant started residing at her matrimonial home in a joint family. Initially, she was being treated well by all the family members, however, after some time, the applicant and his father told the complainant that if she wanted to live there, she would have to work and earn, and therefore, the complainant started her father's business over there, as she had an experience working with her father in the said business.

13. Learned senior counsel Mr. Unwalla further submits that the trial court has rightly considered and observed the cruelty meted out to the original complainant while rejecting the anticipatory bail application. He submits that there is no delay on the part of the applicant in filing the FIR. The complainant took time to recover from the trauma and agony of being deserted and being sexually assaulted. Further, the complainant was afraid of complaining as being victim of sexual assault is considered as stigma in the society. Moreover, the complainant tried to register the FIR on 29.06.2025, however, the authorities refused to register the FIR, and it was only after the intervention of the higher authorities, the complaint was registered. Learned senior

counsel Mr. Unwalla also submits that the WhatsApp communications exchanged by the applicant unmistakably establishes his blatant disregard for the law and reflects hostile, abusive, and threatening conduct towards the complainant. The messages contain repeated verbal abuses and explicit death threats, clearly demonstrating that the applicant has no fear of the police, the legal system, and the consequences of his actions. He further submits that as a husband, the applicant was meant to protect his wife, yet he, not only subjected her to physical and sexual abuse, but also allowed sexual abuse by his father. He also submits that the accused persons are repeat offenders and they inflicted the same level of violence and abuse to the first wife of the applicant. Moreover, the accused persons possess intimate photographs of the complainant, which are crucial piece of evidence, which are saved on the hard-disk and are with the accused persons which are still to be recovered. Not only that, the jewelery and personal belongings of the complainant are also in the possession of the accused persons, and as such, for the purpose of recovering all those materials, the custodial interrogation of the applicant is quite necessary. Learned senior counsel Mr. Unwalla further submits that the applicant also kept doubt upon the character of the complainant and used to ask her to send her current location whenever she went outside alone.

14. Learned senior counsel Mr. Unwalla also submits that the applicant is in possession of the intimate photos of the complainant, and the hard-disk containing such photographs are yet to be recovered, and if the applicant is enlarged on bail and the said photographs are not recovered, there is a likelihood that that he may circulate the said photographs. He submits that the complainant has only mentioned few incidents of cruelty and



violence in the complaint. The detailed investigation will reveal more such incidents and evidences against the accused persons. Moreover, the passport, mark-sheets, data related to the company, confidential company information, computer, laptop, clothes etc. are still in the possession of the accused persons, which necessitates custodial investigation. Not only that, the applicant is addicted to alcohol. Over and above all, the applicant frequently used to do unnatural sex with the complainant against her will and wish. Thus, looking to the seriousness of the offence and the charges levelled against the applicant, the anticipatory bail application warrants rejection and it necessitates the custodial interrogation to uncover the full extent of the extensive criminal conspiracy, recovery of evidence, streedhan etc. to ensure justice for the original complainant who has suffered unimaginable physical, mental, sexual, and financial exploitation at the hands of those who were duty bound to protect her. Learned senior counsel Mr. Unwalla submits that so far as the submissions made by learned senior counsel Mr. Oza that the accused No.2 is bed-ridden and can't do even his routine activities without the aid, he has produced some photographs clearly showing that the accused No.2 is freely moving in the Society without there being any aid. Hence, the present application deserves to be rejected. In support of his submissions learned senior counsel Mr. Unwalla has relied upon the following case laws;

(i) In the case of State of Karnataka vs. T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi & Ors., 2023 LiveLaw SC 965;

(ii) In the case of XX XX XX vs. Arun KUMAR C.K. & ANR., 2022

LIVELAW (SC) 870;

(iii) In the case of State by Karnataka Lokayukta, Police Station vs. M.R. Hiremath, (2019) 7 SCC 515;

15. Learned APP Mr. Soham Joshi has also opposed the present application and submits that he is adopting the arguments canvassed by learned senior counsel Mr. Unwalla appearing for the original complainant, however, he would like to add something that during the course of investigation, the concerned investigating officer has collected the report from the concerned authority under Section 65(B) of the Indian Evidence Act, and as per the said report, the contents of the correspondences that had taken place between the applicant and the complainant are found to be genuine one. Moreover, the statement of the complainant under Section 183 of the BNSS has also been recorded by the investigating officer, and if the contents of the said statement is seen, it appears that very serious allegations have been levelled against the applicant. The statements of the mother and father of the complainant as well as other two persons have also been recorded, which shows that there was a constant physical and mental harassment meted out to the complainant by the applicant and his parents. Hence, the present application deserves to be rejected.

16. Heard the learned counsel appearing for the respective parties and perused the record.

17. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any prima facie or reasonable

ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused. Though at the stage of granting bail execution and appreciation of evidence is not permissible. Hence, custodial interrogation is required.

18. It appears from the record that the dispute in the present case appears to be matrimonial in nature. It also appears from the FIR that very serious allegations of mental and physical assault have been made by the complainant against the applicant and his parents. Very grave and serious allegations of giving burn on the private part of the complainant with the lit cigarretes are made in the body of the FIR against the present applicant. Not only that, learned counsel for the complainant has placed on record certain WhatsApp chats between the complainant and the applicant, wherein very abusive language has been used by the applicant towards the complainant, which clearly shows the mentality of the applicant and his aggressive nature. The allegations of having unnatural sex by the applicant with the complainant are also there in the body of the FIR. Thus, from the allegations made in the FIR, as well as the facts narrated by the complainant and other witnesses in their statements, it appears that the present case is not a simple case of matrimonial dispute. It prima facie seems to be something beyond the general and usual allegations stated to be being made in every matrimonial

disputes by the wife.

19. No doubt, marriage has been seen as an automatic grant of sexual consent since decades, however, the modern legal frameworks increasingly recognize the bodily freedom of an individual, even within a marital relationship. Intimacy is normal between every married couples, however, the same has to be a consensual and mutually respectful act. Having an unnatural sex by any spouse against the will and wish of other partner not only causes immense physical pain but it also gives mental, and emotional trauma to the unconsented spouse. We do understand that no women in our civilised and cultured society would come forward and confront such sensitive issues in public until the level of such harassment and abuse goes beyond her tolerance. The record indisputably further reveals that the applicant has married second time to the complainant and the first wife of the applicant had also made the similar kind of allegations against the applicant, which shows that the applicant is a repeat offender and is habitual in doing such kind of acts.

20. It goes without saying that the alleged offence of physical and sexual assault to the complainant by the applicant is quite grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon me to analyze the seriousness of the offence and determine if there is a need for custodial interrogation.

21. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694, the Supreme Court carefully



considered the principles established by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565. After a thorough deliberation, the Supreme Court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) 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;

(iii) The possibility of the applicant to flee from justice;

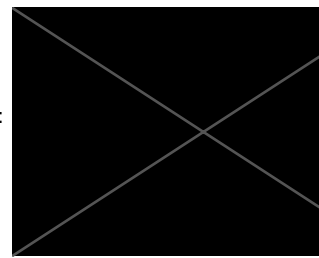
(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.

xxx xxx xxx"

22. In Sushila Aggarwal v. State (NCT of Delhi), (2018) 7 SCC 731, the Constitution Bench of the Hon'ble Apex Court reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

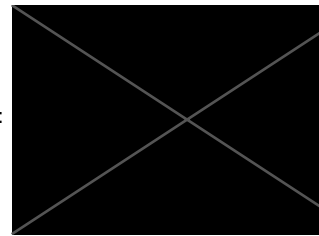


23. In *Satpal Singh vs. State of Punjab*, (2018) 13 SCC 813, the Supreme Court has held that the satisfaction of the court for granting protection under Section 438 Cr.P.C. is different from the one under Section 439 Cr.P.C. while considering regular bail.

24. In *Pratibha Manchanda and another Vs. State of Haryana and another*, (2023) 8 SCC 181, the Supreme Court has opined that “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.”

25. This Court after considering number of decisions of the Apex Court as well as of this Court, has observed in case of *MOHMED SALIM ABDUL RASID SHAIKH V. STATE OF GUJARAT* reported in 2001 [2] GLR 1580 as under;

"13. There is no scope for present applicant to urge that he may be saved from disgrace or unwarranted hardship. While entertaining the anticipatory bail application of the accused, the Court should consider various aspects such as;



[i] earlier offences registered against the applicant accused and the nature thereof including the area of activity, modus etc. if brought to the notice of the Court;

[ii] gravity of the circumstances in which the offence is committed. Whether custodial interrogation is, prima facie, unavoidable ?

[iii] likelihood of the accused fleeing from justice;

[iv] position and status of the accused individually and also with reference to the victim and witnesses;

[v] likelihood of repetition of similar type of offence;

[vi] whether he would jeopardise his own life being faced with grief or grim prospects of possible conviction in the case;

[vii] likelihood of tampering with the evidence or witnesses during the process of investigation, status and stage of investigation;

[viii] plea of false implication on some special vendetta, if taken.

[ix] other relevant grounds which may apply to facts and circumstances of that particular case; “

26. Similarly, the Apex Court has also considered the scope of Section 438 in case of *DUKHISHYAM BENUPANI, ASSTT DIRECTOR, ENFORCEMENT DIRECTORATE [FERA] V. ARUN KUMAR BAJORIA* reported in 1998 [1] SCC 52. The relevant observations made in para-7 are quoted as under :-

"7. It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the

position worse for the aggrieved party. The official Directorate are now injuncted by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench. Such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of the law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order full insulating a person from arrest would make his interrogation a mere ritual."

27. Coming to the case on hand, from the allegations levelled in the FIR and the materials placed on record, it appears that the very serious allegations have been made against the applicant. Thus, at this stage, in my view, custodial interrogation of the applicant is very much necessary.

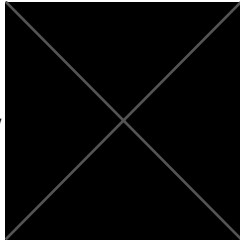
28. Moreover, when the Court is satisfied that a prima facie case of custodial interrogation of the accused is made out by the prosecution for securing the incriminating materials from the information likely to be received from the accused, then the power under Section 482 should not be exercised in a routine manner. The presence of the applicant, in the peculiar facts and circumstances of the present case, seems to be needed to uncover the real truth.

29. Thus, what is discernible from the above is that while

deciding anticipatory bail application, it is the first duty of the Court to see seriousness of the offence, prima facie case and interest of the society at a large. Therefore, when no special and compelling circumstances are made out and no case of false implication of present applicant in the alleged offence is made out before this Court, I am of the opinion that this Court should refrain itself from exercising its discretionary powers in favour of the present applicant at this stage.

30. In view of above discussion and considering the materials produced before this Court, I am of the opinion that there seems to be a prima facie involvement of the present applicant in the commission of the alleged offence. Thus, this Court is of the opinion that at the initial stage of the investigation of the offence, grant of anticipatory bail in favour of the applicant is likely to hamper the investigation and investigating agency is likely to lose an opportunity to exploit all the fact situation, probabilities or opportunities which the Agency may get during the custodial interrogation of a person, and therefore, keeping in mind all the factors, no interference is required at this stage. The impugned order passed by the trial court, rejecting anticipatory bail application of the applicant is just and proper and does not require any interference at the end of this Court.

31. In the result, the present application, being devoid of any merit, is hereby rejected. However, it is made clear that the observations made by this Court herein above at this stage while deciding the anticipatory bail application, would not come in the way of the applicant at the time as and when if ultimately the trial court is proceeded with the trial, and at the



stage of consideration of regular bail application, if preferred by the applicant. Rule is discharged.

(DIVYESH A. JOSHI,J)

VAHID