

MHCC020093472025



IN THE COURT OF SESSION FOR GREATER BOMBAY
ANTICIPATORY BAIL APPLICATION No.1226 OF 2025

Yash Aswani

Aged 28 years, Occ : Business,
701/702, Treasure Island CHS.,
Pimple-Saudagar,
Near Govind Garden, Pune.

....Applicant

- Versus -

**Directorate of Revenue Intelligence,
Mumbai Zonal Unit.**

13, Sir Vithaldas Thackersay Marg,
New Marine Lines, Mumbai 20.

.... Respondent

Appearance :-

Adv. Dr. Sujay Kantawala a/w Adv. Aishwarya Kantawala a/w Adv.
Jeffry Caleb and Adv. Ayushi Jha for the applicant.
SPP Pathak for the Respondent.

CORAM : Prashant C. Kale

ADDITIONAL SESSIONS JUDGE (C.R. No.30)

DATE : 24th June, 2025.

ORDER

By this application under section 482 of the Bhartiya
Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as the Sanhita),
applicant/accused has prayed for grant of bail in F. No.DRI/MZU/B/INT-

59/2025 registered with Directorate of Revenue Intelligence, Mumbai Zonal Unit, for the offence punishable U/s 135(1)(a)(i)(A), 135(1)(a)(i)(B), 135(1)(b)(i)(A), 135(1)(b)(i)(B) of the Customs Act, 1962.

2. It is submitted by the applicant /accused that he is apprehending arrest as the respondent conducted search and raid at his cousin's shop on 16.05.2025 and has seized I-Phones. No copy of panchanama was supplied by the respondent. The case of the prosecution in the nutshell is that, there was recovery of 112 I-Phones, 102 refurbished laptops, 6 Google Pixel phones, 216 pieces of cosmetics and 94,951 grams of tobacco valued at Rs.1,48,79,462/- from six (06) passengers arrived from Sharjah at CSMIA, Mumbai on 15.05.2025 at around 21.22 hours.

3. All those 6 persons were released on bail by the concerned Court. On basis of statements of the one Aman Tilwani, the applicant is facing harassment and attempts are made to falsely implicate the applicant in this crime. It is submitted by the applicant that he is an innocent and there is no single documentary evidence on record to show that applicant is involved in smuggling of seized goods alongwith others. Investigating agency in an arbitrary manner pooled the value of the goods seized individually from them for the purpose of arresting the accused and sending them to judicial custody. Thus, prayed for grant of bail.

4. On notice the respondent appeared and filed reply. It is submitted by the respondent that based on specific information, six (06)

passengers, identified as accused No. 1 to 6 arrived from Sharjah by Air Arabia Flight G9 401 at CSMIA, Mumbai on 15.05.2025 at around 21.22 hours were intercepted near the exit gate after they crossed the customs green channel. During the personal search of all the aforementioned passengers, prohibited goods viz 112 I-Phones, 102 refurbished laptops, 6 Google Pixel phones, 216 pieces of cosmetics & 94951 grams of tobacco were recovered from their possession. The said prohibited goods were found to be valued at 1,48,79,462/-. Statement of all six arrested persons in the case was recorded on 16.05.2025, wherein they identified Mr. Waseem Barambia, Mr. Yash Aswani, and Mr. Mohsin Shaikh as the masterminds orchestrating the syndicate's operations. Subsequently, efforts were made to apprehend Mr. Waseem Barambia near his residence on the same day; however, he absconded. In a related operation, DRI, Pune conducted a follow-up search at Jai Mobile Store, a retail outlet in Sadashiv Peth, Pune, operated by Mr. Yash Aswani's cousin, Mr. Jai Aswani. But Mr Yash Aswani absconded as well. During this search, 11 I-Phones were recovered and seized.

5. It is further submitted by the respondent that ground put forth in application are false. A voluntary statement were recorded under Section 108 of the Customs Act, 1962, wherein the accused categorically stated that applicant is the mastermind and actively involved them in the smuggling operation. Cases cited by the applicant are inapplicable to the facts and circumstances of the present case. The applicant's continued non-co-operation and false accusations underline the necessity of his custodial interrogation to prevent further tampering with evidence.

6. In reply the respondent has mentioned that the Hon'ble Supreme Court in **Srikant Upadhyay & Ors. Vs. State of Bihar** held that

"though in many cases, it has been held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule.

In the case of **State of Gujrat v. Mohanlal Jitamalji Porwal and Anr.**, as:

"[...] the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment, upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit, regardless of the consequences to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest (..."

In **State of Bihar v. Amit Kumar**, the Hon'ble Supreme Court while dealing with a matter concerning large scale fraud in intermediate examinations in Bihar reiterated the law laid down in **Y. S. Jagan Mohan Reddy v. CBI** held that-

It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually, socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously"

In **Naresh J. Shukawani v. Union of India 1996 (83) E.L.T. 258 (S.C.)** it was observed that,

"It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner"

7. Heard the learned advocate for the applicant, investigating officer, learned SPP and perused the investigation papers.

8. In support of his arguments the applicant /accused relied upon the ruling of the Hon'ble Bombay High Court in the case of **Sagar Nana Borkar vs The State of Maharashtra**. It is observed by the Hon'ble High Court, that :

'In my view, though applicant and co-accused found together but, they were carrying the contraband individually. The recovery of the contraband from the possession of the Applicant and co-accused should be considered separately and as observed by this Court in case of Smt.Rashida Iqbal Khan Vs. State of Maharashtra, has taken a same view.'

P Krishna Mohan Reddy vs The State Of Andhra Pradesh SPECIAL LEAVE PETITION (CRIMINAL) NO. 7532 OF 2025, it is observed by the Hon'ble Supreme Court that :

s. "46. Both Indresh Kumar (Supra) and salim Khan

(supra) have held that in deciding the question of grant of bail, it is the statements of witness under Section 161 of the Cr.P.C. that has to be looked into. Nowhere has this Court held that even the police statements of the accused person under Section 161 of the Cr.P.C. must also be looked into at the stage of grant of anticipatory or regular bail.

9. The applicant has also taken aid of guideline, issued vide F. No. 394/68/2013Cus (AS) dated 17.09.2013. As per the revised guidelines issued by the Board, the threshold limit of CIF value (Cost-Insurance+Freight) of the prohibited items for arrest and launching prosecution has been fixed at Rs. One crore or more.

10. The applicant further states that the alleged smuggled goods are already in the custody of the respondent, so there is no question of tampering with the evidence. That all present witness are government employees so there is no question of tampering of evidence. The applicant will suffer severe loss of reputation and his image will be tarnished if he is put behind bars in connection with the present case. The applicant is ready and willing to abide the terms and conditions put by this Hon'ble Court while granting him bail.

11. In support of his contentions the respondent relied upon the rulings in the case of

1. Badku Joti Savant vs State Of Mysore 1966 AIR 1746,

2. Nimmagadda Prasad vs C.B.I., Hyderabad 2013 AIR SCW 3795,

3. Harshad S. Mehta vs Union Of India, And Another

(1992)94BOMLR789,

4. Naresh J. Sukhawani vs Union Of India 1996 AIR 522,

5. V. Senthil Balaji vs The State Represented By Deputy in Criminal Appeal No.2284-2285 of 2023

6. Radhika Agarwal V/s. Union of India in Cr. Writ Petition No.336/2018.

I have gone through the aforesaid rulings. They are not helpful to the respondent, in the facts and circumstances of the case when goods which was seized were found with 6 different persons and they are released on bail by the jurisdictional court. The learned advocate for the applicant /accused submitted that all goods seized in this crime were combined only to make the offence non-bailable. The learned advocate for the respondent has taken me through the various provisions of the Customs Act. However, he has not replied to the question of the applicant /accused as to why the goods which were seized from 6 different persons were valued together.

12. Both the parties have argued the application in consonance with the pleadings made by them. Certainly in the present case the six person from whom the goods were seized to the tune of Rs.1,48,79,462/- are released on bail.

13. The nature and seriousness of the offence alleged, the context of the events likely to lead to the making of the charges, a reasonable apprehension that witnesses will be tampered with are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.

14. Appreciating the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. The discretion is to be exercised on the basis of the available material and the facts of particular case. Evaluating the entire available material carefully, rulings cited by the respondent are not helpful to them. Consequently, appreciating the relevant considerations for grant of anticipatory bail with the present set of circumstances prima-facie case is made out by the applicant/accused for grant of anticipatory bail. The apprehensions of the respondent can be safeguarded by imposing conditions :

ORDER

1. The Anticipatory Bail Application No.1226 of 2025 is allowed.

2. In the event of arrest of the applicant namely **Yash Aswani** in connection with F. No.DRI/MZU/B/INT-59/2025 registered with Directorate of Revenue Intelligence, Mumbai Zonal Unit, for the offence punishable under Section 135(1)(a)(i)(A), 135(1)(a)(i)(B), 135(1)(b)(i)(A), 135(1)(b)(i)(B) of the Customs Act, 1962 on following conditions :-

i) The applicant shall attend the office of the respondent on every Friday between 11.00 a.m. to 5.00 p.m. till filing of the charge sheet / final report.

ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court.

iii) The applicant shall not leave India without the previous permission of the Jurisdictional Court.

iv) The applicant shall submit his contact details to the investigating agency and keep it updated in case there is any change therein, within a period of two weeks.

(v) The applicant shall regularly attend the criminal case arising out of the crime in question, unless his personal appearance is dispensed with by the Jurisdictional Court.

3. The Anticipatory Bail Application No.1226 of 2025 is disposed of accordingly.

Date : 24/06/2025



(Prashant C. Kale)
Additional Sessions Judge
City Civil & Sessions Court,
Gr. Bombay

Directly Dictated on : 24/06/2025
Signed by HHJ on : 30/06/2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
30/06/2025	1.42 p.m.	J.S. Chavan
UPLOAD DATE	TIME	NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H. H. Additional Sessions Judge Prashant C. Kale, Court Room No. 30.
Date of Pronouncement of ORDER	24/06/2025
ORDER signed by P.O. on	30/06/2025
ORDER uploaded on	30/06/2025