

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1063 OF 2015**

Peter Anthony Pereira
alias Clarence Pereira
Versus
State of Maharashtra

...Applicant

...Respondent

Mr. Subhash Jha with Ms. Rushita Jain I/b Mr. Shailendra Kumar C. Singh
for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

PI Mr. Ranjeet Desai from Sawantwadi Police Station is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 29th SEPTEMBER, 2015

P.C. :

1. Yesterday, the matter was heard at length and has been posted
for orders today.

2. This is the second anticipatory bail application preferred by the
applicant. The first anticipatory bail application, being Anticipatory Bail
Application No. 193 of 2012 preferred by the applicant was rejected way
back on 3rd April, 2012 by this Court (Coram : R. Y. Ganoo, J.). The said
application was rejected on merits.

3. By this application, the applicant seeks pre-arrest bail in connection with C.R No. 58 of 2011 registered with the Sawantwadi Police Station, Sindhudurg, for the alleged offences punishable under Sections 454, 380, 457, 451, 427, 504, 506 r/w 34 of the Indian Penal Code.

4. At the outset, it was made clear to the learned Counsel appearing for the applicant that the applicant will not be re-heard on merits, considering that the first application was rejected on merits vide order dated 3rd April, 2012. Learned Counsel for the applicant submits that the change of circumstance after the first order was passed, is that the charge-sheet has been filed in the said case and that in the said charge-sheet, there is no reference to the statement of one Rahim, on the basis of which the earlier application was rejected.

5. Learned A.P.P disputes the same. He submits that the said contention is baseless, inasmuch as, the statement of one Mr. Resham Rahim is on record in the charge-sheet. He has made this statement on the instructions of the Officer who was present yesterday.

6. Learned Counsel for the applicant submits that subsequent applications seeking anticipatory bail are maintainable in law. He relied on certain Judgments in support of his statement. Learned A.P.P does not seriously dispute the same. However, he submits that the conduct of the applicant is such that it disentitles him from being enlarged on bail. He submitted that the applicant has been absconding since 3rd April, 2012 after his first anticipatory bail application was rejected by this Court. He submitted that admittedly, the said order dated 3rd April, 2012 had attained finality inasmuch as, the same was not challenged by the applicant in the Apex Court. The learned A.P.P has filed an affidavit of one Ranjit Desai, Police Inspector of the Sawantwadi Police Station. It is stated in the affidavit that efforts were taken by the police to apprehend the applicant, however, the applicant was not found at his address. He submitted that from time to time, non-bailable warrants were issued against the applicant, however, the applicant was not found at his address. What is strange, is that inspite of the fact that the applicant's anticipatory bail application was rejected by this Court on 3rd April, 2012, the applicant preferred another application seeking anticipatory bail before the learned Sessions Judge at

Sawantwadi, instead of challenging the order dated 3rd April, 2012 before the Apex Court.

7. Considering the conduct of the applicant i.e. of evading arrest for almost three years, the discretionary powers vested in the Court under Section 438 of the Code of Criminal Procedure cannot be exercised in favour of the applicant. The Judgments which have been relied upon by the learned Counsel for the applicant are not applicable to the facts of the present case and as such are not being referred to. It is well settled that while considering the parameters or factors for granting anticipatory bail, what is to be seen, amongst other factors, is whether there is a possibility of the applicant fleeing from justice. This is exactly what the applicant has been doing for the last three years.

8. Considering the conduct of the applicant and the fact that he has been evading arrest for the last three years inspite of non-bailable warrants being issued against him, the applicant does not deserve any relief. Accordingly, the application is rejected.

REVATI MOHITE DERE, J.

CERTIFICATE

Certified to be true and correct copy of the original signed Order.
