

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAILAPPLICATION NO. 31 OF 2015

1. Mr. Bappusaheb Ramdas Bhosure)
2. Mr. Prakash Ramdas Bhosure).Applicants
vs.
The State of Maharashtra ... Respondents

Mr.Rohan Nahar,Advocate for the applicants
Mr.J.H.Ramugade, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 15th January, 2015.

P.C.

Heard the learned counsel for the applicants and the learned APP.

2. This is an application under Section 438 of Cr.P.C. The applicants are apprehending his arrest in Crime No.217 of 2014 registered at Shikrapur Police Station for the offences punishable under Sections 354, 324, 323, 504, 506 read with Section 34 of IPC and under Sections 3(1)(xi), (xii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Apart from the merits of the case, this application needs to be considered in view of the Judgment of the Hon'ble Apex Court in the case of **Sandeep Kumar Bafna vs. State of Maharashtra AIR 2014 SC 1745.**

4. It is a matter of record that the applicants had approached the Court of Sessions seeking pre-arrest bail. The Addl. Sessions Judge, Pune, by an order dated 1.8.2014 was pleased to grant interim relief in favour of the applicants. By an order dated 3.12.2014, the application seeking pre-arrest bail was rejected by the Addl. Sessions Judge, Pune. Before rejection of the application under Section 438 of Cr.P.C. finally, the investigation was completed and charge-sheet was filed on 18.11.2014 and the case was registered as R.C.C. No.421 of 2014.

5. The applicants by an application dated 3.1.2015 had approached the Special Court at Pune and had filed an application under Section 439 of Cr.P.C. Since the charge-sheet was filed, the applicants had prayed for bail on merits. The applicants were in the deemed custody of the Special Court as contemplated in the case of **Niranjan Singh & Anr. vs Prabhakar Rajaram Kharote & Ors. AIR 1980 SC 785**. The learned Special Court is not a Sessions Judge and therefore can take cognizance of the case directly. In view of this, the learned Special Court ought to have considered the application filed by the applicants under Section 437 of Cr.P.C. and decided the application on merits. However, the application was withdrawn before the Special Court.

6. The learned counsel appearing for the applicants fairly submits that since the learned Special Court was of the view that the application was not maintainable, the application was withdrawn by the learned counsel.

7. In the case of **Sandeep Kumar Bafna**, the Hon'ble Apex Court has considered the meaning of the 'custody' and has observed that when a person is physically present before the Court and submits to the orders of the Court, he is deemed to be in custody. In view of this, since the investigation is completed and charge-sheet is filed, it would be for the Special Court to consider the application filed by the applicant surrendering himself to the custody of the Special Court.

8. The learned counsel for the applicants, upon instructions, submits that the applicant would surrender to the custody of the Special Court on 22.1.2015. The interim protection granted earlier shall remain in operation till 2.2.2015.

The applicant stand protected from any coercive action till 2.2.2015.

With this, the application is disposed of.

(SMT.SADHANA S.JADHAV, J.)