

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 65 OF 2015

Mr. Sandip Shankarlal Kedia. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Niranjan Mundargi a/w. Mr. V.V. Mohite, advocate for Applicant.

Mr. S.S. Pednekar, APP for State.

Mr. A.H.H. Ponda, advocate for original complainant.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 22, 2015

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the original complainant and Learned APP for State. Perused the papers.

2 Although the original complainant-wife is not a party to the present application, Learned Counsel appearing for the applicant had issued notice to the original complainant and hence this Court has heard the learned Counsel appearing for the original complainant.

3 In the present application, the applicant has prayed for permission to the applicant to travel to and fro to Dubai from 22/1/2015 till 29/1/2015. This Court is not inclined to consider the said prayer in view of the fact that Miscellaneous Application No. 55 of 2015 is pending before the Sessions Court seeking the same prayer.

4 The applicant herein is being prosecuted for an offence punishable under Section 498A and 406 of the Indian Penal Code. The applicant has filed Criminal Application No. 2399 of 2014 before the Sessions Court under Section 438 of the Code of Criminal Procedure, 1973 on 10/12/2014. The learned Sessions Court has granted interim relief in favour of the applicant. The application is scheduled for hearing on 27/1/2015.

5 It is submitted across the bar that the State of Maharashtra has filed criminal application No. 773 of 2014 seeking relief of impounding the passport of the present applicant. The notice was

issued to the applicant. The applicant has not filed written reply. It is submitted across the bar that the prosecution is insisting upon the applicant to file a written reply. The learned Counsel for the applicant submits that the contention that would be raised in the written reply are covered in his application seeking pre-arrest bail and therefore, he has candidly submitted before the Sessions Court that he does not wish to file written reply.

6 The applicant had also filed Criminal Application No. 767 of 2014 before the Sessions Court seeking permission to travel to Dubai to exercise his visitation rights to meet his 10 years old son. However, the prayers in the said application have become infructuous. It is necessary to finally hear the criminal application No. 2399 of 2014 which is an application under Section 438 of the Code of Criminal Procedure, 1973 and dispose of the same at the earliest.

7 The learned Counsel for the applicant has vehemently submitted that in the Criminal Application No. 2399 of 2014, the

Chief Public Prosecutor is appearing. She has not filed her reply in the said Anticipatory Bail Application and it is being insisted by the State that Criminal Application No. 773 of 2014 should be decided prior to the Criminal Application No. 2399 of 2014. This condition precedent would be unwarranted. Learned Sessions Judge shall complete the hearing of Criminal Application No. 2399 of 2014 on the scheduled date i.e. 27/1/2015. This case has a chequered history.

8 The learned Counsel appearing for the original complainant apprehends that in the eventuality time is consumed by the applicant on 27/1/2015, the complainant would not get a fair hearing. As against this, learned Counsel for the applicant Mr. Niranjana Mundargi submits that he would ensure that he would restrict the argument to the consideration of grant of relief under Section 438 of the Code of Criminal Procedure, 1973. Learned Counsel for the applicant also submits that he would file a written argument in the said application. In the eventuality that written arguments are filed, it would be incumbent upon the learned Sessions Judge to consider the

contentions raised in the written submissions while finally deciding the application seeking pre-arrest bail. The learned APP submits that he would inform the Chief Public Prosecutor appearing in the said Application that she shall not insist upon final hearing of Criminal Application No. 773 of 2014 prior to Criminal Application No. 2399 of 2014 since presence of the applicant can be ensured by the courts of law by imposing certain stringent conditions and therefore, impounding of passport shall not be the condition precedent for hearing the application under Section 438 of the Code of Criminal Procedure, 1973.

9 Hence, this application is being disposed of with direction that the learned Sessions Court seized with the matter, irrespective of requests from the applicant, the complainant or the State shall conclude the hearing of the Criminal Application No. 2399 of 2014 on 27/1/2015. Criminal Application No. 55 of 2015 need not be heard alongwith Criminal Application No. 2399 of 2014. Prayers in Criminal Application No. 773 of 2014 would merge with the prayers

in Criminal Application No. 2399 of 2014. Hence, Criminal Application No. 773 of 2014 be heard alongwith Criminal Application No. 2399 of 2014, but no precedence be given to Criminal Application No. 773 of 2014 to Criminal Application No. 2399 of 2014. The respective Counsel shall make an endeavour to conclude their submissions on 27/1/2015.

10 With these directions, the application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)