

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO. 50 OF 2015

Mr. Anurag Shivmohan Garg

... Applicant.
(Org.Accused no.2)

V/s.

The State of Maharashtra

... Respondent.

Mr. Abad H. Ponda a/w Niranjan Mundargi, Advocate for the Applicant.

Mr. V.B.Konde-Deshmukh, APP for the State.

Mr. Bagwe, PI Crime Branch Unit -I, is present.

Mr. Himanshu V. Kode, Advocate for the Intervener -Sandeep Sunilkumar in Cri. Application No. 78 of 2015.

CORAM : M.L.TAHALIYANI,J.

DATE : 25th FEBRUARY, 2015

P.C. :

1 This revision application is filed against the order of the learned additional Sessions Judge, Thane, who has dismissed the appeal filed by the applicant under section 86 of the Code of Criminal Procedure.

2 The applicant is one of the accused in crime no. 67 of 2013 registered at Vashi Police Station, Thane for the offences punishable under sections 120-B, 302, 201 read with section 34 of the Indian Penal Code. The crime was registered on 16.02.2013. The applicant moved by way of an application to the Sessions Court for grant of bail under section 438 of the

Cr.P.C., which was rejected on 20.02.2013. His prayer for grant of anticipatory bail was rejected by the High Court also. Thereafter, he moved the Hon'ble Supreme Court on 15th April, 2014. His application was decided on 30th April, 2014 and he was directed to surrender before the police within 20 days of the order of the Hon'ble Supreme Court.

3 It is necessary to be stated here that there was no interim relief during the pendency of these anticipatory bail applications before the Sessions Court, High Court and the Supreme Court. The learned Magistrate, therefore, issued a non-bailable warrant against the applicant on 7th of July, 2013. Since, he could not be traced, a proclamation was issued on 26th November, 2013. The applicant was directed to surrender on or before 6th January, 2014. As already stated, his application for grant of anticipatory bail was rejected by the Supreme Court on 30th April, 2014 and he was directed to surrender within 20 days. He surrendered on 9th May, 2014.

4 Since the applicant did not surrender as directed by the Magistrate in the proclamation, the Magistrate proceeded further and attached his properties. It is submitted that his properties have been attached following the order passed by the learned Magistrate. The properties are : Shreeji Heights, Flat No.1803, B-Wing, 8th Floor, Plot No. 1, 1A, 1B & 1C, Sector 46A, Plam Beach Road, Neru, Navi Mumbai -400706 and Shop

Nos. 5, 6 and 21 situated at Ground Floor and Office No.1 and 2 and Shop No.18 situated at First Floor, all in the Shree Ganesh Co-operative Housing Society, Plot No.9, Sector -1, Vashi, Navi Mubmai - 400703.

5 The applicant made an application under sub-section (3) of section 85 of the Code of Criminal Procedure for release of the properties on the ground that he had voluntarily surrendered before the court within a period of 2 years and that he was neither absconding nor concealing himself for the purpose of avoiding execution of the warrant. The learned Magistrate did not accept the contentions of the applicant and rejected the prayer. The statutory appeal filed under section 86 of the Code has also been dismissed by the Sessions Court. It is how the applicant is before this court by way of filing the present revision application.

6 Learned counsel of the applicant Mr. Abad Ponda has submitted that the applicant has every right to protect his liberty and therefore, he had been moving the competent courts for getting requisite reliefs to protect his liberty. It is submitted that remaining away from the execution of warrant and at the same time moving the courts for grant of anticipatory bail cannot amount to abscondance. It is further submitted that the applicant had not been concealing himself. It was brought to my notice that in fact the applicant had been

attending the police station immediately after the incident of 17th February, 2013 and 18th February, 2013 itself. On 19th February, 2013, the applicant made first anticipatory bail application before the Sessions Court, Thane. Mr. Ponda has submitted that the very purpose of sections 82 to 83 of the Cr.P.C. is to secure attendance of wanted accused. It is submitted that the applicant was apprehending arrest in view of the above stated crime and, therefore, he has genuinely moved the competent courts for grant of relief before arrest. Notices of those applications were given to the to the State and the State was also heard before passing the final orders on the said applications. It is the contention of Mr. Ponda that this clearly indicates that the applicant was not absconding but was seeking relief to protect his liberty.

7 The applicant has surrendered before the time limit granted by the Hon'ble Supreme Court. It is contended that if the applicant wanted to abscond, he would not have surrendered within the said time limit also. As such there was no intention on the part of the applicant either to abscond or conceal himself. In these circumstances, the trial court and the appellate court should have accepted the plea that the applicant had neither absconded nor concealed himself.

8 Learned additional public prosecutor Mr. Konde-Deshmukh for the State and the learned Advocate Mr. Kode,

appearing for the intervener (son of the deceased) have submitted that the applicant has kept himself away from the investigating agency for more than one year and that he is not entitled for any relief under sub-section (3) of section 85 of the Code. It is submitted that his properties shall be at the disposal of the State Government in view of the provisions of sub-section (2) of section 85 of the Code.

9 No doubt, the properties of the applicant had already been placed at the disposal of the State Government in view of the non-appearance of the applicant within the time limit fixed in the proclamation. However, sub-section (3) of section 85 gives a discretion to the court by which the property was attached, to deliver the property back to the person against whom a proclamation was issued, if the court is satisfied that he did not abscond or was not concealing himself for the purpose of avoiding execution of the warrant. In my opinion, considering the fact that the applicant had moved Sessions Court, High Court and Supreme Court for grant of necessary reliefs, it cannot be said that he was either absconding or concealing himself. In view thereof, the properties of the applicant could have been delivered back to him by the learned Magistrate. As such the orders passed by the learned Magistrate and the learned Additional Sessions Judge cannot be sustained.

10 Hence, the present revision application is being disposed of as under :

- i. Revision Application is allowed in terms of prayer clause (b).
- ii. The properties mentioned in clause (b) belonging to the applicant attached under the orders of the Magistrate shall be delivered to him within a period of two weeks from the date of this order.

11 Revision application stands disposed of in the above terms.

(JUDGE)

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