

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
ANTICIPATORY BAIL APPLICATION NO. 140 of 2015

Hariprasad Jagannath Shastry & Anr. ... Applicants

Vs

The State of Maharashtra ... Respondent

Mr. Shirish Gupte, Sr. Counsel i/b

Mr. Sandip Karnik for Applicants.

Mrs. Rutuja Ambekar, APP for the Respondent -State.

Mr. Pratap Mohite, PSI, Andheri Police Station, present.

CORAM: P.D. KODE, J.

DATED: FEBRUARY 11, 2015.

PC:

Heard. By this application Applicants have approached this Court for pre-arrest bail in connection with Crime No.376 of 2014 registered with Andheri Police Station for the offences under sections 387, 323, 325, 506 (2) and 504 r/w section 34 of the IPC. In order to understand the controversy arisen which has necessitated to make the present application, it can be said that said Applicants apprehending the arrest had approached the Court of Sessions for the purposes of pre-arrest bail. Court of Sessions upon their application vide order dated 23-8-2014 granted interim bail to them and posted the application for hearing on 22-9-2014.

It appears that in the meanwhile police officer arrested the Applicants and they furnished the bail. In view of the said development the learned counsel for the Applicants informed the Sessions Court that he does not wish to press the application and as such the main application then pending before Court of Sessions was disposed of as withdrawn. Learned counsel for the Applicants having regard to the provisions of section 438 of Cr.P.C. as amended by Maharashtra Amendment Act 24 of 1993 filed an another application for pre-arrest bail amongst other contention that request for pre-arrest bail was not finally disposed of on merits. Court of Sessions rejected the said application mainly with the reasoning that once an Applicant was arrested the application for pre-arrest bail does not survive.

2. Mr. Gupte by laying finger upon the provisions of section 438 of Cr.P.C. as amended by State of Maharashtra submitted that the said provisions reveals that after an interim order is passed Court is duty bound to decide the said application finally upon the merits. It is urged that in the instant case merely because the Applicants were arrested and released on bail in view of interim order, not pressing of the application by his Advocate though was not a correct step taken by him still Court permitting

him to withdraw the said application was not at all warranted as the statutory provisions mandate deciding the said application finally on merits. It is submitted that hence, realising the mistake the application preferred by the Applicants being disposing of on such a count is unsustainable in view of the said provisions.

3. Mr. Gupte submitted that in the circumstances either this Court should consider the provision of pre-arrest bail or should grant some protection to the Applicants and liberty to approach the Court of Sessions for praying for pre-arrest bail and giving proper directions to the said Court.

4 The bare perusal of section 438 of Cr.P.C. supports the submission canvassed by learned senior counsel that once application is made under section 438 of Cr.P.C. and any interim order is passed then Court is bound to decide said application on its own merit finally. Having regard to it, merely because the Applicants were arrested by the police, the second application made for the pre-arrest bail in view of their request for pre-arrest bail being not considered on merits cannot be said to be an order passed in consonance with the provisions of law.

5. Resultantly, the application is allowed. I.O. of Crime No.376 of 2014 is hereby directed not to take coercive step of

arrest against the Applicants for a period of three weeks from today subject to the Applicants (i) staying at the address mentioned in the application; (ii) attending I.O. as and when called by him and not intermingling with the investigation in progress; (iii) not, directly or indirectly, make any inducement, threat or promise to persons acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court or to any police officer; and (iv) not misuse the protection granted vide this order for fleeing away or for committing any further offence.

6. The Applicants are directed to make an application for pre-arrest bail before the Court of Sessions. The Court of Sessions shall decide the application on its own merits uninfluenced by the order passed upon the earlier pre-arrest bail within a period of three weeks from today saving all just exceptions. The Applicant shall prefer such an application at the earliest and in any event within a week.

7. The application stands disposed of .

(P.D. KODE, J.)