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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 386 OF 2015**

Jangal Mahadu Walke ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. S.C. Halli along with Mr. Subhash Hulyalkar for the Applicant.

Mr. A.R. Patil, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 23, 2015**

P.C.

Learned counsel on record for the applicant is directed to make proper compilation. Office is directed to place the application for hearing at 3.00 p.m. today.

(JUDGE)

Resumed at 3.00 p.m.

2. Admit. Heard finally.

3. The applicant is one of the accused in F.I.R. No. 191 of 2015 of Chakan Police Station for the offence punishable under section 302, 304B, 498A read with 34 of Indian Penal Code. The name of the deceased was

Shital. She was allegedly murdered by her husband Vikas and her parents-in-law Baban and Meena. As far as the applicant is concerned, he is stated to be maternal uncle of accused no1 Vikas.

4. The applicant and one Chaitali applied for anticipatory bail before the Additional Sessions Judge, Khed, Rajgurunagar. Interim relief has been granted to the accused Chaitali. However, learned Additional Sessions Judge refused to grant interim bail to the applicant. Whether the order of the learned Additional Sessions Judge was wrong, can be examined after going through the provisions of Section 438 of the Code of Criminal Procedure.

Section 438 (Maharashtra Amendment) reads as under :

“438. Direction for grant of bail to person apprehending arrest – (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors :

(i) the nature and gravity or seriousness of accusation as apprehended by the applicant.

(ii) The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence.

(iii) The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested, and

(iv) the possibility of the appellant, if granted

anticipatory bail, fleeing from justice, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

5. As such it is clear that after conclusion of first hearing of the application under section 438 of Code of Criminal Procedure, the court has either to reject the application forthwith or has to issue interim order for grant of anticipatory bail.

6. In the present case, main application of the applicant is kept pending and his application for interim order has been rejected. In my opinion, the order is not in consonance with the law. Learned Additional Sessions Judge could have rejected the main bail application itself. However, if the main application is kept pending, it was obligatory on the part of the learned Additional Sessions Judge to issue some interim order. Hence, the impugned order passed by the learned Additional Sessions Judge to the extent of refusing the interim relief to the applicant is set aside.

7. In the event of arrest of the applicant in Crime No. 191 of 2015 of Chakan Police Station, he shall be released on bail in the sum of Rs.15,000/- with one surety in the like amount and for the same conditions as imposed on accused Chaitali. This order shall remain in force till the

anticipatory bail application of the applicant is finally decided by the learned Additional Sessions Judge.

This application stands disposed of.

(JUDGE)