

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

CRIMINAL WRIT PETITION NO. 3455 OF 2014

Smt. Sharada Dattatray Choudhari ... Petitioner.

V/s.

State of Maharashtra & Anr. ... Respondents.

Mr. M.S.Mohite i/by V. S. Kapse with N.S. Rajeshirke for the
Petitioner.

Mr. A.H.H.Ponda, Advocate, for Respondent No. 2.

Mr. Ajay Patil, APP for the State.

**CORAM : M.L.TAHALIYANI,J.
DATE : 02 FEBRUARY, 2015**

P.C. :

1 The Petitioner is complainant in FIR No. 528 of 2013 registered at Bandra Police Station on 7th October, 2013 against Respondent No.2-Mr. Prashant Devnani for the offence punishable under section 406 of the IPC. The alleged criminal breach of trust is amounting to Rs. 30,00,000/-.

2 Respondent No.2 has made an application for grant of bail under section 438 of the Criminal Procedure Code, which is pending before the Sessions Court. Petitioner - Smt. Sharada Choudhari had filed an application for intervention. The said application was allowed partly by order dated 14th August, 2014. The order passed by the learned Sessions Judge

permits the Applicant/Petitioner to submit written notes of arguments. The learned additional Sessions Judge refused to give oral hearing to the learned counsel for the Petitioner. It is this order which is being challenged before this court in the present writ petition.

3 Learned counsel Mr. Mohite is heard on behalf of the Petitioner, learned counsel Mr. Abad Ponda is heard on behalf of Respondent No.2 and learned additional public prosecutor Mr. Ajay Patil is heard for the State.

4 Learned counsel Mr. Mohite has relied upon the judgment of this court in the case of **Vinay Poddar vs. State of Maharashtra & Anr.**, reported in 2009 ALL MR (Cri.) 687, wherein the following observations have been made by this court at para 13 of the judgment, which read as under :

“13. When an application for anticipatory bail is considered, the police may not place all factual details before the Court as the investigation in most of such cases is at a preliminary stage. Therefore, some role can be played by the complainant by pointing out factual aspects. In the circumstances, it is not possible to hold that the first informant or the complainant cannot be heard in an application for anticipatory bail. When the complainant appears before the Court in the course of hearing of an application for grant of anticipatory bail, the Court is bound to hear him. But the said right cannot be allowed to be exercised in a manner which will delay the disposal of an application for anticipatory bail. The delay in disposal of such application may adversely affect the investigation.

Therefore, the right which can be spelt out in favour of the first informant or the complainant is of making oral submissions for pointing out the factual aspects of the case during the course of hearing of an application for anticipatory bail before the Court of Sessions. The said right is to be exercised by the complainant either by himself or through his Counsel. This is not to say that the Sessions Court hearing the application for anticipatory bail is under an obligation to issue notice to the first informant or the complainant. There is no such requirement of issuing notice to the first informant or the complainant at the hearing of the application for anticipatory bail. However, if the complainant or the first informant appears before the Court, he cannot be denied a right of making oral submissions either in person or through his Counsel. It must be noted here that the legal position on this aspect in the case of an application for regular bail may not be the same.”

5 Learned counsel Mr. Abad Ponda has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Sundeep Kumar Bafna vs. State of Maharashtra & Anr.** in Criminal Appeal No.689 of 2014. Learned counsel Mr. Mohite has also relied upon the judgment of the Division Bench of this court in the case of **Kashinath Jairam Shetye vs. Ramakant Mahadev Sawant & Ors.**, reported in 2013 ALL MR (Cri.) 861. What could be noted is that the judgment of the Hon'ble Supreme Court has been delivered on 27th March, 2014. The judgments of this court, both Single and Division Bench, are earlier to the judgment of the Hon'ble Supreme Court and therefore, in my view the observations made by the Hon'ble

Supreme Court in the matter of **Sundeep Kumar Bafna** will have to be followed. It is, therefore, necessary to reproduce the relevant portion of the said judgment which is at para no. 25 :

“25. The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the Accused is to be granted bail is a matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Mr. Gopal Subramaniam, Senior Advocate and have perused

detailed Written Submissions since we are alive to impact that our opinion would have on a multitude of criminal trials.”

It is thus clear from the judgment of the Supreme Court that informal hearing can be given to the complainant either in criminal case or in bail application if the court harbours the opinion that the prosecution is likely to fail. As such there is no complete bar on the oral hearing to be given to the complainant or aggrieved party during the course of hearing of criminal case or bail application including anticipatory bail applications, as the case may be.

6 Sufficient discretion is given to the Judge while hearing the criminal case or bail application. In the present case, the learned additional Sessions Judge has observed in his order that -

“We have to strike a balance between right of the aggrieved persons and so also the accused. We have to bear in mind that delay should not defeat justice. Court should endeavour to save maximum time of the court in order to decide more number of cases. Keeping in view the above facts and safeguarding the interest of prosecution, accused and private parties, in my view, if intervener is allowed to file written notes of arguments, documents and affidavits if any, it will save the time of the court in hearing lengthy arguments of counsel for hours together and it will also enable the court to decide more number of applications

and reduce pendency. Thus, interveners are allowed only to file written notes of arguments, documents in support of their contentions and affidavit, if any.”.

If one goes to the observations made by the learned additional Sessions Judge, it can be seen that the learned Judge has not given any finding whether he harbours any opinion that the prosecution is likely to fail. To follow the judgment of the Supreme Court in the case of **Sundeep Kumar Bafna**, it is necessary to give finding on this issue by the Judge before whom the application for hearing is pending. At the same time, the Hon'ble Supreme Court has also observed that the hearing can be given at the crucial and critical stage. The question, therefore, arises as to what is the crucial and critical stage and on what basis the Judge can form or harbours the opinion that the prosecution is likely to fail. In my opinion, the proper course in a such case would be to allow the counsel for the applicant and the learned additional public prosecutor to conclude their arguments. At that stage, the learned Judge can consider the written arguments, if any, filed by the complainant or by the aggrieved party and may decide whether situation warrants informal hearing by the complainant or aggrieved party or the Advocate. Permission to address the court obviously will be given only when the opinion of the Judge is recorded in writing. Such a hearing, if any, given by the Judge shall also be for a limited period. In

my opinion this is the import of the judgment of the Hon'ble Supreme Court in the matter of Sundeep Kumar Bafna. It need not be stated here that the court shall take care in such cases that the Advocate for the complainant or aggrieved party does not repeat the arguments submitted by the learned additional public prosecutor. He shall be told to be precise in his address on the facts which are not unfolded before the Judge by the learned public prosecutor and the law which has not been canvassed. No exhaustive directions can be issued in such situation. To say in other words, it is expected that the learned Judge while hearing the criminal case or bail application takes a judicious view of the matter and passes a necessary order.

7 With these observations, the Petition stands disposed of with liberty to the Petitioner to make an application at an appropriate stage for informal / oral arguments before the Judge hearing the bail application.

(JUDGE)

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