

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1517 OF 2014

Rakesh Brijlal Jain .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.Shirish Gupte, Senior Advocate with Smt.Racheeta Dhuru i/b
Vinay J. Bhanushali, Advocate for the applicant.

Mrs.S.Gajare-Dhumal, APP for the Respondent State.

Mr.Ramchandra Dashrath Jadhav, PI, Santacruz Police Station,
present in Court

CORAM : ABHAY M. THIPSAY, J.

DATED : 13th OCTOBER, 2015

P.C. :-

1 Heard Mr.Shirish Gupte, Senior Advocate for the
appellant. Heard Mrs.S.Gajare Dhumal, learned APP for the State.

2 Pursuant to the order passed yesterday, the learned
counsel for the applicant has made available to this Court a copy
of the application made by the applicant before the Court of

Sessions being Anticipatory Bail Application No.1422/13, and a copy of the order dated 14th November 2014 passed by the Court of Sessions rejecting the said application.

3 The applicant had previously applied for Anticipatory Bail before this court (A.B.A.No.443 of 2012). The said application was heard on 10th May 2012; and after advancing arguments and after the matter had been carefully considered by the Court, the learned counsel for the applicant had withdrawn the said application, stating that he would raise all the contentions before the appropriate Court *while seeking bail in the event of his arrest*. Thus, it was understood at that time that the applicant would be arrested and would be seeking regular bail.

4 However, after the withdrawal of the said Anticipatory Bail Application, which was on 10th May 2012, the applicant actually was not arrested. He continued to be at large. It appears that attempt was made to arrest him some time in October 2013, *which is after a gap of one year and 4 months* from the date of the withdrawal of his said ABA. At that time, the applicant moved the Court of Sessions by the aforesaid Anticipatory Bail Application, and the learned Addl. Sessions Judge before whom the application was placed, granted interim protection to him. This application,

as aforesaid, was ultimately rejected by the Court of Sessions on 14th November 2014.

5 It is not in dispute that since the withdrawal of the applicant's previous Anticipatory Bail Application, there has been a change in the circumstances. The office and house of the applicant has been searched thereafter. Some of the co-accused in this case have been granted Anticipatory Bail, thereafter.

6 The emphasis of the learned APP is on two aspects. The first is that there exists a prima facie case of the alleged offences against the applicant. The second is – and it is put forth strongly – that the applicant is not entitled to make a fresh application for bail, in as much as, while withdrawing the previous Anticipatory bail application filed by him before this court, he had indicated that he would be seeking regular bail. The contention is that it is not now open for the applicant to seek anticipatory bail afresh. Ordinarily, a person whose anticipatory bail application is rejected, would not get an opportunity to make a fresh application for anticipatory bail, as he would be arrested after the rejection of his anticipatory bail application. However, in this case, the applicant was not arrested, inspite of the rejection of his

application for anticipatory bail by this court. When questioned in that regard, the learned APP submitted that the applicant again moved the court of Sessions for anticipatory bail in October 2013, and was protected by an interim order of anticipatory bail which was passed by the court of Sessions on 4th October 2013, till his said anticipatory bail application was ultimately rejected by an order dated 14th November 2014. However, even after rejection of his anticipatory bail application, the court of Sessions continued the interim granted to him for a period of three weeks, within which period, the applicant approached this court by the present application. By an order dated 2nd December 2014, this court (Coram : Smt.Sadhana S. Jadhav, J.) granted interim relief to the applicant by passing an interim order of anticipatory bail. The applicant is protected from time to time during the pendency of the present application.

7 This, however, does not explain why the applicant was not arrested during the period from 10th May 2012 to 4th October 2013, i.e. for a period of about one year and five months after the withdrawal of his application for anticipatory bail on 10th May 2012.

8 When questioned about the failure of the investigating agency to arrest him thereafter, the learned APP, on instructions from the Investigating Officer, submits that the applicant could not be arrested as he was absconding. It is pointed out from the case diary that on 3 – 4 occasions, the police had made attempts to arrest him by visiting his residence and workplace, but that, he was not available.

9 Mr.Gupte, the learned Senior Advocate submitted that the applicant was very much available to the police for arrest, if they wanted. It is submitted that the applicant never changed his residence or his workplace. It is submitted that the applicant being a business man, was carrying on his business in the usual manner. It is also submitted that the applicant also appeared before a Magistrate's Court as a witness and gave evidence in one case. Thus, the substance of the contention advanced by the learned counsel is that applicant was very much available to the Investigating Agency, but that, still he was not arrested.

10 I find substance in his contention. Though the learned APP claims that efforts were made to apprehend the applicant after he had withdrawn his Anticipatory Bail Application, I find that such efforts were made only on 3 – 4 dates, and that

they were not serious. It is not possible to hold that the applicant was absconding, or could not have been arrested by the Investigating Agency. If they wanted, they could have easily arrested him. For some reasons, best known to the police, they were, apparently, not keen on the arrest of the applicant.

11 Though it is true that the applicant had indicated that he would seek regular bail, he actually made another application for anticipatory bail only. Such an opportunity, however, was provided to him by the investigating agency itself, which is to be blamed for not apprehending the applicant within time, and for permitting a serious change in the circumstances to take place. It is not that the applicant had suppressed the fact of his having previously withdrawn an application for anticipatory bail filed by him in this court, from the court of Sessions; and this has been verified from a copy of the application made by the applicant to the court of Sessions, which has been produced today. A doubt can certainly be entertained that the applicant had managed to avoid his arrest by using improper methods; but even if it is believed to be so, the investigating agency cannot avoid the blame in that regard. After carefully considering the matter from all the angles, the proper course seems to decide the anticipatory bail application on merits, by considering the position as of today.

12 In this background, I have considered whether today there is necessity of the detention of the applicant in custody for the purpose of investigation or whether the applicant is likely to abscond. Admittedly, the applicant has attended the police station and made himself available for investigation/ interrogation on more than 50 occasions. As aforesaid, the search of his house and his workplace has already been taken. The nature of the case is not such that for collecting evidence and proving the allegations against the applicant, his custodial interrogation and detention would be essential. The applicant is protected by an interim order of Anticipatory Bail right since 4th October 2013.

13 Though there exists a prima facie case against him, his detention and / or custodial interrogation does not seem to be necessary for the purposes of investigation. Infact, it appears that evidence has already been collected against the applicant. The applicant is not likely to abscond. In these circumstances, when today, there are no justifiable reasons for requiring detention of the applicant in custody, merely because at one point of time, the applicant had given up hope of pre-arrest bail, his prayer for the same should not be refused now. At the cost of repetition, it may be observed, that the investigating agency is responsible for

providing a fresh opportunity to the applicant to seek anticipatory bail afresh, and just because they now show a concern for the arrest and custodial interrogation of the applicant – which does not appear to be essential for the purposes of investigation – the applicant cannot be denied anticipatory bail.

14 After considering all the relevant aspects of the matter, I am inclined to allow the application. However, I am inclined to enhance the amount of bail fixed by the interim order.

15 In the event of his arrest, the applicant be released on bail in the sum of Rs.1,00,000/- (Rupees One lakh) with one surety in like amount, or two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand) each, on the condition to attend the police station, everyday between 11.00 a.m. to 2.00 p.m., and make himself available for investigation/ interrogation for a period of two weeks commencing from 15th October 2015, and thereafter, as and when required by the Investigating Officer.

16 The applicant shall report to the police station on 15th October 2015 itself at 11.00 a.m.

(ABHAY M. THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the
original signed Judgment /Order.**