

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.354 of 2015

(Narayanprasad Bhagwandas Fogla and others

vs.

The State of Maharashtra, through P.S.O. Khadan, Akola)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 23, 2015.

Heard Mr. Subhash Paliwal, the learned Counsel
 for the petitioners and Ms. N.P. Mehta, the learned A.P.P. for
 the State.

As a very limited controversy is involved in the
 present petition, which is filed under Article 227 of the
 Constitution of India read with Section 482 of the Code of
 Criminal Procedure, in my opinion, the same can be disposed
 of at the threshold.

The controversy revolves around on the backdrop
 of the facts, namely, the applicants, against whom the report
 was lodged at Police Station Khadan, Akola for the offences
 punishable under Sections 498-A, 406, 323, 504, 506 read
 with Section 34 of the Indian Penal Code and under Sections
 4 and 5 of the Dowry Prohibition Act, 1961, are the residents
 of Mumbai, the petitioner No.1 is the retired personnel from a

private business, the petitioner Nos.2 and 4 are the ladies engaged in their household activities, the petitioner Nos.1 and 2 are in their advanced ages of 63 and 61 years respectively and the petitioner No.3 is carrying out his business at Mumbai. The petitioners apprehending their arrest approached the Principal Seat of this Court seeking protection in the nature of transit bail. This Court at Mumbai by order dated 15/01/2015 in Criminal Application [ABA] No. 73 of 2015, considering the submissions on behalf of the applicants as well as the learned A.P.P. for the State and on perusal of papers, though arrived at a conclusion that the applicants deserve protection in the nature of transit bail, passed the order allowing the application with the directions, which reads thus :

[ii] In the event of arrest in Crime No.5 of 2015, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each and one or two sureties in the like amount.

*[iii] The applicants shall furnish cash bail in the eventuality of their arrest, since **the applicants hail from Mumbai and not from Akola** (emphasis supplied).*

[iv] This order shall remain in force till 5:00 p.m. of 05/02/2015.

The applicants thus approached the learned District and Sessions Judge by filing application for anticipatory bail bearing M.C.A. No.39 of 2015. The learned Additional Sessions Judge, Akola on the backdrop of the submissions of the learned Counsel for the applicants and the learned A.P.P. arrived at a conclusion that the custodial interrogation of the applicants is not necessary and they are entitled for the protection of anticipatory bail, allowed the application. Though the application was allowed, it was subject to the condition No.2 i.e. in the event of arrest, the applicants shall be released on bail on furnishing solvent surety of Rs.25,000/- each with a P.R. Bond in like capacity each, in Crime No.05/2015 of Police Station Khadan, Akola for the offences punishable under Sections 498-A, 323, 406, 504, 506 read with Section 34 of the Indian Penal Code and Sections 4 and 5 of the Dowry Prohibition Act and the other conditions, namely, the applicants shall not pressurize the complainant and the prosecution witnesses nor shall tamper with the prosecution evidence and shall cooperate the investigating agency as and when required.

The learned Counsel for the petitioners submits that the applicants, being residents of Mumbai and as they faced the difficulty of complying with the directions of clause

No.(ii) viz. furnishing of solvent surety of Rs.25,000/- each, approached the learned Sessions Judge seeking modification of the order. The learned Counsel for the petitioners by inviting my attention to the copy of the application placed on record as Annexure-6 submits that it was contended before the learned Sessions Judge that the applicant Nos.1 and 2 being old aged persons and residents of Mumbai as well the other applicants being residents of Mumbai, it will create hurdles as well as harassment for them to furnish solvent surety of Rs.25,000/- each before the Hon'ble Lower Court. It was prayed that if the Court reduces the amount of surety of Rs.25,000/- to Rs.15,000/- or below, no prejudice would cause to the prosecution and the applicants are ready to abide by the other conditions imposed by the Court while granting the application. The learned Counsel further submits that the applicants also filed an application granting permission to the applicants to release them on cash security to show the *bona fides* of the applicants. He further submits that the learned Sessions Judge misread the application filed by the applicants. It was the *bona fide* attempt of the applicants to seek the modification in consonance with the order passed by this Court at the Principal Seat, but the learned Sessions Judge treating the application filed by the

applicants/petitioners, as if they were seeking directions to the Court, rejected the same on an erroneous consideration. The learned Counsel then invited my attention to the notice issued by the Police Station Authority of Khadan, firstly to the present petitioners along with other accused-Dr. Sumit asking them to appear before the police authority on 24/04/2015 and a notice issued under Section 91 of the Code of Criminal Procedure. The learned Counsel then submits that the petitioners apprehend that if the order passed by the Sessions Judge is not modified, the petitioners would be subjected to some coercive steps making the order passed by the learned Sessions Judge ineffective and the exercise of the petitioners would be a futile exercise. The learned Counsel submits that the intention of the petitioners is not to give a go-bye to the order passed by the learned Sessions Judge with only to follow the directions with reasonable modification.

Ms. N.P. Mehta, the learned A.P.P. vehemently opposes the petition.

On perusal of the order passed by the Principal Seat in Criminal Application No.73/2015, wherein the Principal Seal specifically referred to the backdrop seeking transit bail, namely, the applicants are the residents of Mumbai and also imposed condition vide clause (iii)

permitting the applicants to furnish cash bail with referring to the fact that the applicants hail from Mumbai and not from Akola, in my opinion, the applicants were justified in approaching the learned Sessions Judge seeking modification of the order. There cannot be a dispute by such modification, no prejudice would have been caused to the prosecution. The learned Sessions Judge seems to have considered the application under an erroneous belief that the application was filed for seeking protection to the trial Court. The learned Counsel for the petitioners, in my opinion, made out the case.

The order passed by the learned Sessions Judge, dated 30/01/2015 is modified to the extent of directing the petitioners to furnish solvent surety of Rs.25,000/- (Rupees Twenty Five Thousand Only), instead of this direction, condition is modified to the effect that the applicants are permitted to furnish solvent surety of Rs.15,000/- (Rupees Fifteen Thousand Only) each and one or two sureties in the like amount.

Needless to state that the other conditions imposed upon by the learned Sessions Judge shall remain as it is. With this modification, the petition is thus partly allowed.

The learned A.P.P. is also directed to communicate this order to the concerned police station.

Authenticated copy of this order be supplied to the
learned Counsel appearing for the parties to act upon.

The petition is disposed of as such.

JUDGE

**sdw*