

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

Criminal Writ Petition No.749 of 2015

(Rajesh Sudaam Bodele

vs.

The State of Maharashtra, through Police Station Sadar, Nagpur)

=====

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

=====

Court's or Judge's Orders

Mr. Mahesh Rai, Advocate for the Petitioner.

Mr. R.S. Nayak, A.P.P. for the Respondent.

CORAM : V.M. DESHPANDE, J.

DATE : SEPTEMBER 22, 2015.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

An application under Section 438 of the Code of Criminal Procedure for anticipatory bail was moved by the applicant before the learned Sessions Judge at Nagpur, since he was apprehending his arrest in connection with Crime No.89/2015, registered with Police Station Sadar, Nagpur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code. Initially the Trial Court granted *ad interim* protection in favour of the applicant on 04/04/2015.

On 05/09/2015, the learned A.P.P., in-charge of the brief, moved an application that the applicant shall remain present personally before the Court, since the applicant was not co-operating with the investigation and he is not available in the

given address. Thereafter the matter was fixed on 11/09/2015. On the said date, the applicant failed to remain present before the Trial Court. Therefore, on the said date, interim protection granted by the Court below was vacated. Thereafter, the matter was fixed for further consideration of the application. In the meanwhile, on 14/09/2015, which is wrongly typed as 15/09/2015 at page no.32 of the compilation, the applicant moved an application for *ad interim* anticipatory bail. The learned Judge of the Court below on the very same day observed that the application will be considered only after the appearance of the applicant before the Court. Thus, his appearance has made a pre-condition for granting *ad interim* pre-arrest bail.

The instances for appearance before the Court in the application for anticipatory bail can be made either *suo motu* by the Court or by the prosecutor by moving an application. However, under such circumstances, the applicant should have umbrella of interim protection, as observed by this Court in the case of Mr. Ashik Rameshchandra Shah and others vs. State of Maharashtra, reported in 2010 ALL MR (Cri) 2524.

According to the learned Counsel for the applicant, now the M.C.A. No.713/2015 is fixed for final hearing on 1st of October, 2015 in the Court of Additional Sessions Judge, Nagpur

In that view of the matter, no coercive steps should be taken against the applicant till 1st of October, 2015 and the

applicant shall remain present before the Court below on 1st of October, 2015. If the applicant fails to remain present before the Court below, then the interim order passed by this Court shall stand vacated and the learned Judge of the Court below will get an opportunity to decide the application in accordance with law.

The writ petition is disposed of accordingly.

JUDGE

**sdw*