

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

ANTICIPATORY BAIL APPLICATION NO.245 OF 2016

Raj Prem Khilnani

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Manoj Mohite i/b. Ms Poonam Ankleshwaria for the
Applicant.

Mr. Arfan Sait, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 9th FEBRUARY, 2016.

P. C. :

This is an application for anticipatory bail filed by the
aforesaid Applicant in apprehension of his arrest in C.C. No.567 of
2011 pending on the file of J.M.F.C., Pune.

2. Pursuant to the private complaint lodged by Narayan
Tarawade, the learned Magistrate had issued process against the
Applicant herein for offence punishable under sections 364 A, 347,
448, 504 and 506 (2) r/w. section 34 of the IPC. The Applicant had
filed an application being Anticipatory Bail Application No.3445 of
2014 before the Sessions Court, Pune. The learned Sessions Judge,

Pune, has dismissed the application as not maintainable. The reasons stated by the learned judge are that the offence is not registered at the police station, that the Magistrate had not issued a warrant against the Applicant and that the Applicant is at liberty to appear before the learned Magistrate. The learned Sessions Judge held that there is no apprehension of arrest by police and hence dismissed the application as not maintainable.

3. Relying upon the judgments of the Hon'ble Apex Court in **Bharat Chaudhari & Anr. Vs. State of Bihar, AIR 2003 SC 4662** and the judgment of this Court in **Akhlaq Ahmed Vs State of Maharashtra 1998 (2) Mh. L.J. 932**, the learned counsel Mr. Manoj Mohite has submitted that the learned Sessions Judge has erred in holding that the application is not maintainable.

4. Mr. Arfan Sait, the learned APP has submitted that the learned Magistrate has only issued process and that no warrant was issued against the Applicant. He therefore, contends that there is no reasonable apprehension of arrest and hence, the application is not maintainable.

5. I have perused the records and considered the submissions

advanced by the learned senior counsel for the Applicant and the learned APP for the Respondent-State. Before analysing the contentions raised by the Lnd. Counsel for the Applicant and referring to the judgments cited thereof it would be advantageous to refer to the provisions under section 438 of the Criminal Procedure Code, which 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; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

6. Section 438 CrPc confers wide powers on the Sessions Court as well as on the High Court, to grant bail to persons apprehending arrest in non bailable cases. While considering the scope and ambit of section 438 of Cr.P.C. The Apex Court in the case **Sidharam Mhetre Vs. State of Maharashtra AIR 2011 SC 312** has held that *“It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the*

legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.” The Apex Court has further held that “it is a settled legal provision crystalized by the constitution bench in Sibbias case that the Court should not impose restrictions on the ambit and scope of section 438 of the Criminal Procedure Code which are not envisaged by the legislation. The court cannot rewrite the provisions of statue in the garb of interpreting it”.

7. In **Bharat Chaudhari & Anr. Vs. State of Bihar, (supra)** the Apex Court upon considering the scope of section 438 of the Criminal Procedure Code has held that there is no restriction in regard to exercise of powers under section 438 of the Criminal Procedure Code even when cognizance is taken or charge-sheet is filed. It is held that the object of section 438 of the Cr.P.C is to prevent undue harassment of the accused persons by pretrial and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet would not by itself, prevent the concerned Courts from granting anticipatory bail in appropriate cases.

8. In **Akhlaq Ahmed Vs State of Maharashtra (supra)** this Court after considering the principles laid down by the Division Bench of Delhi High Court in the case of **P.V Narasimha Rao Vs. State-C.B.I. MANU/DE/0701/1996** and Division Bench of Kolkata High Court in **Pankaj Lochan Sahoo Vs. State (1996) 2 Crimes 555** has held that “it is not possible to hold as proposition of law that Sessions Court or High Court will have no power to entertain the application for anticipatory bail where either summons or warrants have been issued against the accused. The court has the jurisdiction to grant anticipatory bail on being satisfied that the accused apprehends arrest in a non bailable offence”.

9. From the dictum laid down by the Hon'ble Apex Court as well as by this Court in the aforestated decisions, it is crystal clear that the application for anticipatory bail cannot be rejected merely on the ground that the process has been issued and the charge-sheet has been filed or on the ground that summons has been issued by the concerned Magistrate. The only requirement of section is reasonable apprehension of arrest in non bailable offence.

10. Reverting to the facts of the present case, the learned Sessions Judge has held that the application is not maintainable as the offence is not registered at the police station and further no warrant has been issued against the Applicant. It is pertinent to note that powers to grant bail under section 438 of Cr.P.C. are not restricted to police cases. Similarly registration of FIR or issuance of non bailable warrant is not a condition precedent to exercise powers under section 438 of the Cr.P.C. As stated earlier, the only requirement for invoking powers under section 438(1) of the Code is a reasonable apprehension of arrest in a non bailable offence. In the instant case the learned Magistrate has already issued process for offence under section 307 of the IPC against the Applicant for offence, which is triable by Sessions Court. Hence, the mere fact that the Magistrate had issued summons and not a warrant cannot be a ground to hold that the Application has no reasonable apprehension of arrest.

11. The learned Sessions Judge was therefore, not justified in rejecting the application on the ground that the offence is not registered at the police station. Similarly, the fact that the Magistrate has issued summons to the Applicant does not mean that the Court has no jurisdiction to entertain the application for anticipatory bail. The

reasons given by the learned Sessions Judge for rejecting the bail application cannot be sustained.

12. The learned Sessions Judge has not considered the application on merits. Hence, I deem it fit to remand the matter to the learned Sessions Judge, Pune, to decide the application for anticipatory bail on its own merits.

13. Under the circumstances, the impugned order is set aside. The learned Sessions Judge, Pune, is directed to decide the application for anticipatory bail on its own merits. Considering the fact that the criminal case is of the year 2011 and that the application for anticipatory bail is of the year 2014, the learned Sessions Judge is directed to dispose of the said application as expeditiously as possible and in any event, within a period of two weeks from the date of receipt of this order.

14. At this stage the learned counsel for the Applicant submits that the Applicant is required to appear before the Magistrate on 18.2.2016 and that he apprehends that he would be arrested even before the application for anticipatory bail is decided by the Sessions

Court. In view of the said apprehension expressed by the Applicant, in my considered view it is just and proper to protect the Applicant for a period of two weeks i.e. till the disposal of the application for anticipatory bail by the learned Sessions Judge on following conditions:

15. In the event of arrest of the Applicant in C.C. No.567 of 2011 pending on the file of J.M.F.C., Pune, the Applicant shall be released on bail on furnishing bail bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety to the like amount. The interim bail shall remain in force for a period of two weeks.

16. The application stands disposed of. Parties to act on authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)