

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.357 OF 2016
WITH
CRIMINAL APPLICATION NO.212 OF 2016

Rajanigandha @ Rita Singh.

...Applicant.

vs.

The State of Maharashtra.

...Respondent.

Mr. Arun Rajput for the Applicant.

Mr. Deepak Thakare, APP. for the State.

None for the Applicant in Criminal Application No.212 of 2016.

CORAM : A.S.GADKARI, J.

DATE : 16th April, 2016

P.C.

This is an application for pre-arrest bail. The applicant is apprehending arrest in CR No.484/2015 registered with Khar Police Station, Mumbai under Section 370(3) read with 34 of the Indian Penal Code and under Section 3,4,5,6,7(1)B of the Immoral Traffic (Prevention) Act and under Sections 4,10 and 12 of the Protection of Children from Sexual Offences Act.

2) This is the second application of the applicant for pre arrest bail. The earlier application for pre-arrest bail bearing Anticipatory Bail Application No.1641 of 2015 was dismissed by this Court by its order dated 6.1.2016. The said application was dismissed solely on the ground that in the present crime it was alleged that a minor girl was forced in the vocation of prostitution

and after taking into consideration the fact that the allegations against the applicant are very serious in nature, the earlier application was dismissed.

3) The present application has been filed by the applicant in view of the change in circumstance. The change is that in the case of co-accused Bajo Jangal Sah and others the learned Trial Court after considering all the circumstances of the present case recorded a finding that the victim Bijli (the said minor girl) was above 18 years of age and the provisions of Protection of Children from Sexual Offences Act, 2012 are not applicable to the present case, by its order dated 16.2.2016 passed below Exhibit-1 in Sessions Case No.627 of 2015 arising out of CR No.484 of 2015. The learned counsel for the applicant submitted that the said order has reached finality as the State did not challenge the said order. He submitted that it is the substantive change in circumstance and therefore, the applicant is entitled to file the present application for pre-arrest bail. In support of his contention he relied on the following two decisions:-

- i) 2005 CRI.L.J. 2086 in the case of Ganesh Raj vs. State of Rajasthan and ors. delivered by the Full Bench of the Rajasthan High Court.
- ii) ALL MR(CRI) 2007 1572 in the case of Kamlesh Dhirajlal Gandhi vs. State of Maharashtra delivered by the learned Single Judge of this Court.

The Full Bench of Rajasthan High Court in the case of Ganesh Raj (supra) has held that second or successive application

for anticipatory bail is maintainable, if there is a change in the fact situation or in law which requires earlier view being interfered with or where earlier finding has become obsolete. This is the only limited area in which the accused who has been denied the bail earlier, can move a subsequent application. It has been further held by the Full Bench of the Rajasthan High Court that second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstance, further development, different circumstances, some more details, new documents or illness of the accused. The learned Single Judge of this Court in the case of Kamlesh Dhirajlal Gandhi (supra) while following the ratio in the case of Ganesh Raj (supra) has held that successive application for anticipatory bail after rejection of the earlier application would be tenable in law. That, however, it is tenable only when there is a change in the fact situation or law which requires earlier view to be interfered with where earlier view has become obsolete. The learned Single Judge of this Court has also relied upon a Judgment of the Supreme Court in the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan reported in 2005 0 Criminal L.J. 944 while arriving at the said conclusion.

4) In view of the afore stated settled legal position, in the present case, after rejection of the earlier application preferred by the applicant by this Court on 6.1.2016, there is substantial change in the facts situation and also the in-application of the provisions of law. As stated above by order dated 16.2.2016 in the case of Bajo Jangal Sah and ors. passed below Exh.1, the learned Special Judge under the Protection of Children from Sexual Offences Act, 2012 has

recorded a finding that the said alleged minor girl was above the age of 18 years on the date of incident and therefore, the provisions of POCSO Act cannot be made applicable to the present case. The earlier application preferred by the applicant was dismissed by this Court mainly or rather only on the ground that a minor girl was forced in the vocation of prostitution and therefore, the allegations being of very serious in nature the earlier application was rejected. The said observation made by this Court has now become obsolete in view of the finding recorded by the learned Special Judge after verifying the medical certificate and other related documents produced by the prosecution pertaining to the said victim girl.

5) In view of the substantive and major change in the fact situation and the non application of the provisions of the P.O.C.S.O. Act, I am of the considered opinion that the earlier view taken by this Court requires interference and the applicant is entitled for grant of pre-arrest bail.

The application is accordingly allowed on the following conditions.

a) In the event of arrest of the applicant in CR No.484/2015 registered with Khar Police Station, Mumbai, the applicant be released on bail on her furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

b) The applicant shall attend the Khar Police Station once in a month on very first Monday between 11.00 a.m. to 2.00 p.m., till the conclusion of the trial.

c) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

- d) Application is allowed in the aforesaid terms.
- e) As the ABA No.357 of 2016 is allowed on merits, the Criminal Application No.212 of 2016 for intervention does not survive and the same is disposed off accordingly.

(A.S. GADKARI, J.)