

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL BAIL APPLICATION NO.866 OF 2016
(TRANSIT BAIL APPLICATION)**

Shri Shekhar Chandrashekhar

... Applicant

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.Sudeep Pasbola with Vikram Sutharia, Debashish Mitra, Nitin Kamble
and Bhavesh Thakur i/b Legal Assistance for the Applicant
Mrs.P.P. Shinde, APP, for Respondent – State
Mr.P.I. Khedkar, EOW., Mumbai – present

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: APRIL 20, 2016

P.C.:

1. Not on Board. Upon mentioning, taken on Board.
2. This application is moved for transit bail by the applicant-accused as warrant is issued by the learned Single Judge of the High Court of Judicature at Madras on 9.7.2015. In the application, the applicant-accused has prayed that this Court be pleased to stay the effect of warrant issued in connection with C.R. No.122 of 2013 registered with Cyber Crime Branch, Chennai. The applicant-accused is facing under charges under sections 406, 419, 420, 120B of the Indian Penal Code and section 66B of the Information Technology Act.

3. The learned Counsel for the Applicant relied on the order of the Hon'ble Supreme Court dated 13.4.2016 passed in Criminal Appeal No.308 of 2016 arising out of SLP (Cri.) No.732 of 2016. This is another case but arising out of C.R. No.33 of 2015 registered at EOW, Unit No.3, Mumbai, which was initially registered at C.R. No.263 of 2015 with Goregaon police station, Mumbai. The learned Counsel submitted that the Supreme court has directed the applicant-accused to approach the trial Court and also directed to deposit Rs.3.5 crores within one month and remaining Rs.16 crores thereafter within 3 months. The learned Counsel submitted that the applicant-accused is released on bail by the trial Court i.e., Sessions Court, Mumbai by its order dated 15.4.2016. However, in between, the police officer from Chennai has come to Mumbai to arrest the applicant-accused as warrant is issued by JMFC, District Alandur, Chennai. He further submitted that if this applicant-accused is arrested, then, it is not possible for him to deposit the amounts as directed by the Supreme Court. It is further submitted that this order is passed by the learned Magistrate under section 267 of the Code of Criminal Procedure as the attendance of this applicant is required. The learned Counsel submits that this Court may grant transit anticipatory bail so that the liberty of the applicant-accused can be protected. He further submitted that the learned Single Judge of the High Court at Chennai has fixed his application for hearing for recalling the order of cancellation of bail

tomorrow i.e., on 21.4.2016. Mr.Pasbola relied on the contents of the affidavit dated 22.3.2016, especially para XIV thereof. He submitted that due to peculiar circumstances, the applicant-accused could not comply with the orders passed by the High Court while granting bail.

4. Learned Prosecutor has opposed this application on the ground that the order of cancellation of bail is passed by the learned Single Judge of High Court at Chennai for non-compliance with the conditions of bail and, therefore, the High Court at Chennai, has cancelled the bail granted by the learned JMFC. She submits that no transit bail under section 439 can be granted.

5. Perused the order dated 9.7.2015 passed by the learned Single Judge of the High Court at Chennai. In the reasoned order, it is specifically mentioned that the accused has not complied with the conditions imposed by the Court below and hence, the bail granted to the accused is cancelled. When warrant is issued pursuant to the order passed by the High Court, then powers under section 438 of the Code of Criminal Procedure cannot be invoked. Similarly, powers under section 439 cannot be used as it is as good as sitting in appeal or reviewing the order of the High Court. This is not a Writ Petition under either Article 226 or 227 of the Constitution of India. In respect of use of powers when the

production warrant is issued by the learned Magistrate or any other Court, this Court has taken a view earlier that the powers under section 438 cannot be invoked.

6. I rely on my judgment in the case of **Himanshu @ Hemant Rajendra Bhatt vs. The State of Maharashtra**¹.

7. In these circumstances, the application is rejected.

(MRIDULA BHATKAR, J.)

¹ 2015(2) Mh.L.J. 84