

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1772 OF 2016

Chunnilal D. Fariya

Petitioner

versus

Rajkumar Unhale and others

Respondents

Mr.Sujit B. Shelar for Petitioner.

Mrs.A.A.Mane, APP, for State.

Mr.Sanjeev P. Kadam with Mr.Tushar Pimpale, Sandeep Kochrekar and Prashant Raul for Respondent.

CORAM : P.D.NAIK, J.
(Vacation Court)

DATE : 9th May 2016

PC :

1. This petition is preferred by original complainant by invoking the jurisdiction of this Court under Article 227 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure, 1973 ('Cr.PC').

2. The Petitioner is the first informant in CR No.I-339/2014 registered with Rabodi Police Station, Thane for the offences punishable under Sections 420, 467, 468, 471, 406 read with Section 34 of Indian Penal Code. Respondent no.1 was impleaded as an accused in the said first information report ('FIR'). The said first Respondent had earlier preferred an

application for anticipatory bail before this Court. The said application bearing Anticipatory Bail Application No.318 of 2015 was rejected by this Court (Coram : A.S.Gadkari, J.) vide order dated 18 March 2016. Pursuant to the said order, the first Respondent-accused preferred Special Leave to Appeal (Criminal) No.2628 of 2016 before the Apex Court. The Apex Court vide order dated 11 April 2016 was pleased to dispose of the said SLP. While disposing of the SLP, the Apex Court was pleased to observe that no grounds for interference is made out in exercise of the jurisdiction under Article 138 of the Constitution of India.

3. The first Respondent thereafter surrendered before the concerned Police Station on 4 May 2016. The investigating officer then produced the first Respondent-accused before the Court of Chief Judicial Magistrate, Thane ('CJM') on 4 May 2016. In the remand application, the Police sought police custody of the first Respondent. The remand application spells out certain grounds seeking police custody. Learned CJM vide order dated 4 May 2016 directed that the first Respondent-accused be remanded to judicial custody till 18 May 2016. Thereafter, the first Respondent preferred an application for bail before the CJM. The said application is pending.

4. The first informant, therefore, preferred this petition challenging the order passed by learned CJM granting judicial

custody to the first Respondent-accused vide order dated 4 May 2016.

5. Heard learned advocate for the Petitioner, learned counsel for first Respondent as well as learned Prosecutor for the State. It is contended by the Petitioner that learned CJM has passed an order which is contrary to law. It is submitted that learned CJM has virtually discharged the first Respondent-accused by passing the impugned order. It is also submitted that the grounds for custody enumerated in the remand application have not been taken into consideration by learned CJM. It is also pointed out that this Court while rejecting the anticipatory bail application, has made observations in paragraph 10 to 12 of the said judgment wherein it has been observed that first Respondent-accused has played a major role in the alleged offence. It is also pointed out that the first Respondent-accused had preferred special leave petition before Apex Court, which has been rejected. It is further submitted that the learned CJM ought to have granted police custody to the first Respondent-accused, as prayed for by the investigating officer in the remand application. It is submitted that by granting judicial custody, the investigation is being hampered. Learned Prosecutor supported the prayers made by the Petitioner in this application. It is submitted that Police are supporting the remand application and seeking police custody.

6. I have gone through the contents of the writ petition, documents annexed to this petition as well as the impugned order passed by the CJM. Although it may not be said that the order amounts to discharging the first Respondent-accused, but in the facts and circumstances of the case, the observations made by learned CJM as well as the operative part of the impugned order passed by the CJM, was not at all warranted. This Court while rejecting the anticipatory bail application of the first Respondent-accused has categorically stated that prima facie offence is made out against the first Respondent-accused. However, the order of learned CJM is contrary to the order passed by this Court while rejecting the application for anticipatory bail. No doubt, as submitted by learned counsel for first Respondent-accused, the discretion is vested in the learned CJM to consider the issue of grant of either police custody or judicial custody. However, in the facts and circumstances of present case, it has to be noted that overt act is being attributed to the first Respondent-accused and there are observations made by this court while rejecting the application for anticipatory bail. It is not necessary to go into the detailed observations as the application preferred by the first Respondent-accused is still pending before learned CJM.

7. I am satisfied that the order passed by learned CJM with the observations made therein and granting judicial custody to first Respondent, requires interference and the same has to be

set aside by exercising inherent power of this Court under Section 482 of the Cr.P.C; as well as in exercise of supervisory power of this Court under Article 227 of the Constitution of India.

8. It may also be required to be considered that the impugned order was passed by learned CJM and he has already expressed his opinion. In the circumstances, it would be appropriate if the proceedings are posted before another Magistrate having jurisdiction.

9. Learned Prosecutor has submitted that a fresh application will be moved before the concerned Magistrate seeking remand of the first Respondent-accused. The Investigating Officer is, therefore, directed to prefer such a fresh application before the concerned Magistrate having jurisdiction to whom the proceedings will be assigned by tomorrow i.e. 10 May 2016. The concerned Magistrate before whom such a fresh application will be posted, will decide the said application on its own merits and in accordance with law without being influenced by the observations made by this Court.

10. Hence, I pass following order :

(a) The impugned order dated 4 May 2016 passed by Chief Judicial Magistrate, Thane in CR No.I-339/2014 granting

judicial custody to the first Respondent till 18 May 2016 is hereby set aside;

(b) The Investigating Officer is directed to file a fresh application for remand before the concerned Court, as stated hereinabove, on 10 May 2016. The concerned Magistrate before whom said application will be posted, will consider the remand application in accordance with law without being influenced by the observations made by this Court in this order. The observations made in this order are restricted to the prayers made in this petition;

(c) The learned CJM shall assign forthwith, the remand application to be filed tomorrow i.e. on 10 May 2016, to another Magistrate having jurisdiction;

(d) In view of this order, the interim relief granted by this Court on 6 May 2016 stands vacated;

(e) All concerned including learned CJM shall act on an ordinary copy of this order duly authenticated by registry of this Court.

(P.D.NAIK, J.)

MST