

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 839 OF 2016

Yogesh S. Ahire and others.	...Applicants.
vs.	
The State of Maharashtra.	...Respondent.

Mr. H.P. Ingale i/by Prashant Goyal for the Applicant.
Mrs. J.S. Lohokare, APP. for the State.
Mr.B.R.Zaveri for Respondent No.2.

CORAM :A.S.GADKARI, J.
DATE : 20th September, 2016

P.C.

1. This is an application under Section 438 of the Cr.P.C. for bail in anticipation of arrest. The applicants were apprehending arrest in CR No.28/2015 registered with Dahisar Police Station under Section 498A, 406, 504, 506 read with 34 of the Indian Penal Code. The Anticipatory Bail Application No.339 of 2015 preferred by the applicants was allowed by the Sessions Court by its order dated 22.7.2015.

As the applicants committed the breach of the said order the original complainant Smt. Sapna Ahire filed Misc. Application No.89 of 2015 in ABA No.339 of 2015 under Section 439(2) of the Cr.P.C. for cancellation of anticipatory bail granted to the applicants. The learned Additional Sessions Judge by its order dated 30.4.2016 was pleased to allow the said application and cancelled the anticipatory bail granted to the applicants. The applicants have preferred the present application under Section 438 apprehending arrest in the said crime.

2. At the out set, it is to be noted here that an application under Section 438 of the Cr.P.C. for pre-arrest bail is not maintainable, after cancellation of the anticipatory bail by the Sessions Court under Section 439(2) of Cr.P.C., as even if the present application is allowed, the order of cancelling the bail remains in force as the same cannot be quashed or set aside in the proceedings under Section 438 of the Cr.P.C. Facing with this difficulty, the learned counsel for the applicants, on instructions, seeks leave to withdraw the present application with liberty to adopt the appropriate legal proceedings, if so, advised thereby challenging the order dated 30.4.2016 passed by the Sessions Court.

Leave and liberty granted.

3. Application is disposed off as withdrawn with the aforesaid liberty.

4. The impugned order herein was passed on 30.4.2016 and the applicants have preferred the present application on 5.5.2016. That, this Court by an order dated 12.5.2016 has granted interim relief to the applicant and the same is in force till today. In view of the same, the applicants are hereby further protected for a period of two weeks from today with a view to enable them to adopt the appropriate legal proceedings as stated above.

5. Application is disposed of in the aforesaid terms.

(A.S.GADKARI, J.)