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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 973 OF 2016

Sachin Ramesh Mhatre

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Nitin P. Dalvi for applicant.

Mr. Makarand Patil, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 6th September 2016.

P.C.

1 This is an application for pre-bail under Section 438 of Cr. P.C. in CR No.123 of 2016 dated 17.5.2016 registered with BKC Police Station, Mumbai under Section 379 of the Indian Penal Code.

2 The first information report is lodged by Smt. Manjusha M. Mate, the Registrar of the Family Court, Bandra, Mumbai on 17.5.2016. It is stated in the said report that, on 16.5.2016 at about 17.30 (5.30 p.m.) in the Court room of the Principal Judge, Family Court hearing of the case bearing No.D-94 of 2010 was being conducted. That the applicant herein is

the party to the said proceedings. That the Family Court No.1 passed an Order on 16th May 2016. The said Order was in the hand-writing of the Principal Judge, Family Court No.1. At 17.40 (5.40 p.m.) the Bench Clerk Smt. Gandhali Mahadik gave the said Order along with relevant documents to the applicant and his Advocate Smt. Rutuja Mhatre for reading. The Bench Clerk Smt. Mahadik thereafter went to the Chamber of the Principal Judge of the Family Court for Court work and when she returned to the Court hall, she noticed that the applicant was not present there and the documents along with said Order passed therein were also not found on the table. The said Bench Clerk thereafter tried to search the said documents. She also asked the concerned Stenographer Miss. Sonam Kedari for the same when Miss Kedari told her that the applicant did not give any papers to her. The Bench Clerk Smt. Mahadik submitted a report in writing to the Principal Judge, Family Court and subsequent thereto the present crime is registered.

3 Heard the learned counsel for the applicant and the learned APP and I have also perused the entire record made available before me.

4 The learned counsel for the applicant submitted that as a matter of fact, as of today the record is reconstructed and the said Order is on the record of the Family Court. He submitted that the concerned Judge

of the Family Court is having animosity against the applicant and therefore the concerned Judge of the Family Court has directed its staff to register the present crime. He further submitted that the applicant was not going to be benefited by doing the alleged theft of the documents from the Court and therefore the allegations against the applicant is per-se not justifiable. He submitted that the record is now reconstructed and there no need to trace out the original documents and for that purpose the custodial interrogation of the applicant is not necessary. He therefore submitted that the applicant may be granted pre-arrest bail.

Per contra, the learned APP vehemently opposed the present application by filing a detailed affidavit of Shri Harishchandra M. Patil, Police Sub-Inspector attached to B.K.C. Police Station, Bandra, Mumbai dated 13.7.2016 and submitted that application of the applicant may be dismissed.

5 At the outset, it is to be noted here that the allegations of the commission of theft of the record/documents of the Family Court along with original hand-writtten Order dated 16.5.2016 against the applicant is undoubtedly very serious in nature. As far as the contention of the applicant that the concerned Judge of the Family Court is having animosity against the applicant and therefore the concerned Judge of the Family

Court has directed its staff to register the present crime, prima facie appears to be preposterous and the same cannot be taken into consideration at this juncture. The said contention is recorded only for its rejection at its threshold, as in my view no evidence is available on record to substantiate the same beyond reasonable doubt. It prima facie appears that the applicant is unnecessarily making wild allegations against the Judicial Officer and the same cannot be countenanced. Apart from the same, it is to be noted here that the Apex Court has categorically held in various decisions that the detailed evaluation of the evidence need not be done for grant or rejection of the pre-arrest bail. The Apex Court has held that, the Court has to see whether a prima facie case is made out from the first information report and relevant documents, serious allegations against the accused and the gravity of the offence which pursue the Court either to grant or reject the pre-arrest/regular bail.

In this back ground, it is to be noted here that it is the specific and precise case of the prosecution that the applicant has committed theft of some documents from Court room pertaining to the case No.D-94 of 2010 pending on the file of the Family Court, Bandra, Mumbai along with original hand-written Order passed on 16.5.2016 by the Principal Judge, Family Court No.1, Mumbai. That the applicant is the principal accused

and his Advocate has been arraigned as a co-accused. Unless and until the applicant is custodially interrogated, the original document along with the hand-written Order thereon alleged to have been stolen from the record of the Family Court, Mumbai cannot be recovered.

6 Thus, after taking into consideration the serious allegations against the applicant, gravity of the offence and need of recovery of the original documents including the original Order passed thereon, the Court is of the considered opinion that this is not a fit case to grant pre-arrest bail to the applicant. The application is accordingly dismissed.

7 At this stage, the learned counsel for the applicant submitted that the applicant would like to test the correctness of the present Order before the Hon'ble Supreme Court and prayed that the interim relief as was granted by the Trial Court and subsequently extended by this Court from time to time be further extended. The learned APP opposed the same. As the present application is decided on merits today, I am not inclined to extend the interim relief and the prayer for extension of interim relief is hereby rejected.

(A.S. GADKARI,J.)