

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1250 OF 2016

Mrs. Geeta Kapil Shukal	.. Applicant
Versus	
The State of Maharashtra & Anr.	.. Respondents

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1273 OF 2016**

Mr. Kapil Gajaan Shukal	.. Applicant
Versus	
The State of Maharashtra & Ors.	.. Respondents

Mr. Rishi Bhuta, Advocate for the Applicant in A.B.A. No.1250 of 2016.
Mr. S.S. Gandhi, Advocate for the Applicant in A.B.A. No.1273 of 2016.
Ms. Rutuja Ambekar, A.P.P. for the Respondent – State.

CORAM : N.W. SAMBRE, J.

DATED : 24th NOVEMBER, 2016.

P.C. :

1 The applicants in both these applications are husband and wife who are seeking pre-arrest bail in Crime No.181 of 2016 for the offences punishable under sections 420, 504, 506(2) r/w.34 of the I.P.C.

2 It is the case of the prosecution that both these applicants in connivance with an accused Amit Kothari has formed an firm, got license under the provisions of Drugs and Cosmetics Act, 1940 and purchased the raw material which is used for manufacturing of pharma product. While doing so, it is claimed that the applicants have practiced fraud on the complainants firm and after purchasing the material, has not paid the consideration resulting into registration of the crime.

3 The learned counsel for the applicants while making out a case for grant of bail would urge that the applicant Kapil is shown to be an employee of the firm which is owned by Amit Kothari, the main accused who is already arrested. He would submit that the proceedings under Section 138 of the Negotiable Instruments Act, are already initiated against said Amit Kothari. For the act of employer of the applicant, the applicant Kapil can not be held responsible. It is further claimed that the applicant Geeta who happens to be the wife of the applicant Kapil, is nowhere concerned with the offence in question. According to the applicants, she is falsely implicated. As such according to them, they are entitled for pre-arrest bail.

4 Per contra, the learned A.P.P. submits that the memorandum recorded under Section 27 of the Evidence Act speaks of the story which reflects the prima facie involvement of both these applicants in the crime in question. According to her, on same line of investigation as has been reflected in the memorandum, the only conclusion that could be drawn is the involvement of the applicants.

5 Perused the investigation papers and other material on the record, it is required to be noted that a license under the Drugs and Cosmetics Act was issued in the name of one Geeta B. Chavan who is shown to be an employee of Amit Babulal Kothari, who is an original license holder. So far as said Geeta is concerned, apart from the reflection of her name in the license as employee, there are no attributions qua her participation in the crime in question but for section 27 memorandum.

6 In my opinion, in the absence of any contributions against her particularly as regards the actively participation in the commission of crime, she is entitled to be released on pre arrest bail.

7 In the background of above, in the event of her arrest, the applicant Geeta be released on bail on furnishing PR. Bond of Rs.25,000/- with one or two sureties in the like amount. She attend police station on 6th, 8th and 10th of December 2016 between 10.00 a.m. to 12.00 noon and thereafter as and when called. The applicant shall not tamper with the evidence or influence the witnesses.

8 So far as the claim of the applicant Kapil is concerned, he is very much named in the F.I.R and specific role attributed him. The material depicts that in the crime in question he has equally participated with that of main accused Amit Kothari. Both of them practiced fraud on the complainant, won the confidence of the complainant for getting pharma material on credit and sold the same in the market at comparatively lesser cost, purely with an intention to the complainant.

9 No doubt the accused Amit Kothari is facing proceedings under Section 138 of the Negotiable Instruments Act, however, the said pendency is of the prosecution under Negotiable Instruments Act, which provides for the presumption against the accused persons. Apart from above, the applicant is specifically named in the memorandum also. As such no case is made out. The Application is rejected.

10 The learned counsel for the applicants submit that since the applicants are under protection for quite a long time, the interim protection be continued for a period of four weeks which is opposed by the learned A.P.P. and learned counsel for the complainant. In the interest of justice, the interim protection is continued for a period of three weeks from today.

(N.W. SAMBRE, J.)