

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1375 OF 2016

1. Kamal Madanlal Agarwal	)	
2. Pramodkumar Phusraj Bothra	).. Applicants	
vs.		
The State of Maharashtra	.. Respondent	

Mr. Shashikant Chaudhari a/w Mr. Nilesh Tank, Advocate for the applicants.
Mr. Prashant Jadhav, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 19th September, 2016.

P.C.

1. The applicants being aggrieved by the order dated 10.5.2016 passed by the Addl. Sessions Judge, Ichalkaranji cancelling the pre-arrest bail granted in favour of the applicants vide order dated 15.12.2013, have approached this Court under Section 482 of Cr.P.C. The applicants herein are accused in Crime No.117 of 2014 registered Gaonbhag Police Station, Ichhalkaranji and are being prosecuted for the offences punishable under Sections 403, 405, 406, 420, 503, 504 read with Section 34 of the IPC.

2. By an order dated 7.12.2013, while granting pre-arrest bail, the learned Sessions Court had imposed a condition that the applicants shall attend the Gaonbhag Police Station on 15th, 16th and 17th December, 2014

and thereafter as and when called by the police and to co-operate with the police in the course of investigation.

3. The learned counsel for the applicants submits that the applicants had appeared in the police station as directed by the learned Sessions Judge, however, the investigating officer was not present and, therefore, they had given their telephone numbers and had requested the I.O. to call upon and that they would attend the police station as and when called.

4. The papers of investigation show that the applicants herein were called on 4.1.2015 by the Investigating Officer. On that day, the applicants had telephonically informed the investigating officer that due to ill-health, they cannot remain present and that they would appear at the police station on 2.2.2015 after taking advice from the doctor. On 2.2.2015, the applicants neither appeared before the police station nor sent any intimation and hence on 7.2.2015, the prosecution filed an application seeking cancellation of relief granted in their favour. There was no co-operation by the applicants in the course of investigation.

5. The learned Sessions Court has observed in para 3 of the impugned order that despite service of notice to the opponents, they failed

to appear in the petition to rebut the allegations made by the investigating agency.

6. As on today, the investigating officer is present in Court and is unable to make any statement as to whether he had inspected the records of the Court to see that the notice issued by the Sessions Court was served upon the applicants. Today, the bone of contention of the learned counsel for the applicant is that notice was not served upon the applicants and the bail has been cancelled without giving him a fair opportunity to rebut the allegations or represent himself in the said proceedings seeking cancellation of pre-arrest bail.

7. The papers of investigation would reveal that on 25.4.2016, it was the scheduled date for hearing of the said application, but the investigating officer could not remain present. The I.O. has filed a report that on 25.4.2016 itself, the application filed by the prosecution was allowed as was informed to the I.O. by the concerned clerk. They had not received the order since it was summer vacation. The date of the order appears to be 10.5.2016. The negligence of the investigating officer is writ large on the face of the record. The applicants were not heard when the application filed by the prosecution was allowed. It is a matter of record that the applicants were granted pre-arrest bail by considering the merits of

the matter.

8. The learned counsel for the applicants submits that the applicants were not heard. The applicants are residents of West Bengal. It is one thing to grant bail and the criteria for cancellation of bail is different. The applicants were granted bail in December 2013 and it prima facie appears that notice for cancellation of bail was not served upon them. The learned counsel submits that the applicants are willing to co-operate with the investigation as on today also. Hence, the application deserves to be allowed.

ORDER

- (i) The application is allowed.
- (ii) The order dated 10.5.2016 passed by the learned Addl. Sessions Judge, Ichalkaranji, stands quashed and set aside.
- (iii) The applicants shall report to the concerned police station on 28.9.2016, 5.10.2016 and 19.10.2016 between 10 a.m. to 12 noon.
- (iv) Upon failure to report the police station on any date, the prosecution would be at liberty to seek cancellation of bail.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)