

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1438 OF 2016

Sagarika Sanjiv Wagle

... Applicant

Vs.

The State of Maharashtra

... Respondent

.....

Mr. Suresh Dubey, Advocate for the Applicant.

Ms.R.M.Gadhvi, APP for the State.

.....

CORAM : N. W. SAMBRE, J.

DATE : 15th December, 2016

P.C.

1 In Crime No.I-209 of 2016 punishable under Section 420 of IPC, it is claimed by the prosecution that the Applicant has withdrawn an amount of Rs.21,50,000/- from the Complainant assuring him return of higher interest. It is then claimed that since the amount was not returned, crime came to be registered.

2 While trying to make out case for grant of pre-arrest bail, the learned counsel for the Applicant while relying upon the judgment of the Apex Court in the case of **Sumit Mehta v. State of N.C.T. Of Delhi** in **Criminal Appeal No.1436 of 2013** decided on September 13, 2013 would submit that the Sessions Judge was

otherwise willing to grant bail. However, unreasonable condition of deposit of Rs.11,15,000/- is incorporated under pressure from the Applicant. He would then urge that the Applicant is not in a position to pay the said amount.

3 While countering the said submissions, the learned APP submits that it is the Applicant who volunteers before the learned Sessions Judge that she will deposit an amount of Rs.11,15,000/- vide demand draft. According to her, the Applicant has not honoured the said condition and as such, application be rejected.

4 Judgment in the matter of **Sumit Mehta (Supra)** delivered by the Hon'ble Supreme Court while interpreting the words "**Any Condition**" as employed in Section 438 of the Code of Criminal Procedure, 1973 has observed that unreasonable condition cannot be incorporated while ordering release. The said judgment will hardly be of any assistance particularly when from paragraph 9 of the Sessions Court's judgment, it could be made out that it is the Applicant who volunteers to refund an amount of Rs.11,15,000/- vide DD to the Complainant.

5 In my opinion, once the Applicant herein has volunteered and has not honoured the said condition, the Applicant is not entitled for any protection from this Court. No case is made out. Application stands rejected.

6 At the request of the learned counsel for the Applicant interim protection is continued for a period of three weeks from today though opposed by the learned APP.

(N. W. SAMBRE, J.)