

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1493 OF 2016

1. Sopan Krushna Bhamare
2. Sandip Krushna Bhamare
3. Ramdas Dharma Bhamre
4. Tatyabhau Dharma Bhamare
5. Vitthal Ramdas Bhamare
6. Krushna Dharma Bhamare

.....Applicants

V/s.

The State of Maharashtra

....Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1494 OF 2016

1. Sandip Bapu Khairnar
2. Bapu Mahadu Khairnar
3. Sambaji Bapu Khairnar
4. Sudam Prakash Khairnar
5. Anil Sitaram Suryavanshi

....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Ramesh Dube-Patil i/b M. S. Jay and Co. Advocate for Applicants.
Mr. S. S. Pednekar APP for the State.
Mr. Y. M. Nakhwa APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : OCTOBER 5, 2016.

PC :

1) Heard. These are applications under section 438 of the Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. I- 131 of 2013 registered at Jaykheda for offences punishable under sections 395, 397, 307, 438, 511, 452, 324, 354, 323, 427, 504 and 506 of the Indian Penal Code. Offence is registered in the year 2013. Investigating agency was not co-operating with the prosecutors in Sessions Court as well as in the High Court. It is pertinent to note that the names of the present applicants were mentioned in the F.I.R. Despite that, applicants were never called to the police station by issuing notice under section 160 of the Code of Criminal Procedure, 1973.

2) This Court had observed that in the eventuality A.P.I. Umesh patil does not remain present on 05/10/2016, the court would be constrained to issue non-bailable warrant against A.P.I. Umesh Patil and it is only after the observations that the investigating officer is present before this Court. Upon query made by this court as to whether the accused/applicants are summoned to the police station, he had answered in the negative. It is clear that investigating agency is not interested in arresting the accused or taking the accused in custody for the purpose of custodial interrogation.

3) As far as the merits of the matter are concerned, the learned counsel for the applicants submits that for the past three years they had no apprehension of arrest. The investigating agency is contemplated the filing of the charge-sheet and therefore, at this juncture, after three years, applicants are suddenly apprehended arrest. Needless to say, it is clear from the records that at the instance of the investigating officer, applicants have filed applications under section 438 of the Code of Criminal Procedure, 1973, irrespective of the merits of the matter.

4) The learned counsel for the applicants submits that in March 2016, some of the accused were granted pre-arrest bail by this Court and therefore, the learned counsel for the applicants seeks pre-arrest bail on the ground of parity.

5) It is true that the court cannot interfere with the investigating agency. The custodial interrogation is sought after there is a subjective satisfaction of the investigating agency to have custodial interrogation. From the conduct of the investigating officer, it is clear that the investigating agency was not satisfied and in a case where custodial interrogation would be imperative and therefore, no steps were taken in that direction. It is further pertinent to note

that there was no inquiry with the accused/applicants. The investigating officer who is present in the court does not even have a case diary to show that applicants were not available for interrogation. The conduct of the investigating officer in not co-operating with the prosecutors in the court to assist the court is deprecated.

6) It is in these circumstances, this Court is inclined to grant pre-arrest bail in favour of applicants. However, it is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

7) Office to communicate this order to the Superintendent of Police, Nashik.

ORDER

(i) Applications are allowed.

(ii) In the event of arrest, applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- each with one or two sureties in the like amount.

(iii) Applications stand disposed of.

(SMT. SADHANA S. JADHAV, J.)