

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1620 OF 2016

Rajkumar Sobhagmal Jain.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. A.K. Chauhan a/w. Mr. Naik a/w. Mr. Prasad Sankpal, advocate
for Applicant.

Mr. R.M. Pethe, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 23, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is subsequent application under Section 438 of the Code of
Criminal Procedure, 1973. The earlier application filed by the present
applicant under section 438 of the Code of Criminal Procedure, 1973
was heard on 31/8/2016. This Court had passed an order as follows :

“The learned counsel for the applicant, upon instructions, seeks liberty to withdraw the application and submit that the applicant would appear before the 6th Judicial Magistrate First Class at Pune. In view of this, the applicant is protected till 5 p.m. on 3.9.2016.

2. This Court is not inclined to grant pre-arrest bail in favour of the applicant on the basis of the material and investigation papers. The learned Magistrate shall take the applicant into custody and decide his application on merits without being influenced by the withdrawal of this application.

Application stands dismissed as withdrawn.”

The learned Counsel after arguing for some time, had sought protection till 5 p.m. of 3/9/2016.

3 Today the subsequent application is filed seeking relief under section 438 of the Code of Criminal Procedure, 1973. According to the learned Counsel for the applicant, there is change in circumstances and therefore, the present application is maintainable. The first circumstance, according to the learned Counsel for the applicant, is the death of the mother of the applicant. Upon perusal

of the death certificate, it is clear that the mother of the applicant had expired on 20/6/2015 and the application was rejected on 31/8/2016 and hence, it cannot be said that it is a change in circumstance.

4 The learned Counsel for the applicant in order to demonstrate the change in circumstance has filed alongwith the application one application filed by Dinesh Jain before Third Additional Commissioner of Police, CID on 2/5/2016. The said application is notarised after the previous application was rejected. According to the learned Counsel for the applicant, Dinesh Jain has stated that Rupesh had demanded Rs. 30 Lakhs from the complainant and that the complainant has specifically stated that he had taken jewellery worth Rs. 33 Lakhs from Abhishek and cheque for an amount of Rs. 5 Lakhs was given to Abhishek Mutha and it was agreed that the remainder would be paid subsequently. It was then noticed that in fact, the jewellery was actually worth Rs. 20 Lakhs and he had given three cheques to Abhishek Mutha to the tune of Rs. 5 Lakhs, 12 Lakhs and

16 Lakhs. He had informed Abhishek Mutha about the same and he had denied to return the amount and has started threatening the complainant and had also informed the complainant that he belongs to the crime syndicate of Chhota Shakil and according to the learned Counsel for the applicant, on 27/6/2016 the applicant was travelling to Hariyana and hence, he has been falsely implicated and it is shown that he has assured that he would pay Rs. 5 Lakhs. The said document is also notarised after the application was rejected.

5 All these documents were in the custody of the applicant on 31st August, 2016 also. In fact, the applicant had given undertaking that he would appear before the learned Magistrate on 3/9/2016. Hence, he was protected. There is breach of undertaking, which is given to the Court and he was protected for a limited period only to enable him to appear before the Magistrate. The said documents cannot be considered to be a change in circumstances and as there is breach of undertaking given to the Court, the present application deserve to be rejected.

6 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

7 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)