

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO. 572 OF 2016

Sanjay Shantaram Patil Vs. The State of Maharashtra & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. A.M. Savagave for applicants in Appln. 572/2016.
Mr. A.S. Patil, APP for State.

CORAM : A.S. GADKARI, J.
DATE : 5th October 2016.

P.C.:

- 1) This is an application for cancellation of interim anticipatory bail granted to respondent No.2 by an Order dated 19th September 2016 passed below Exhibit 3 in Anticipatory Bail Application No.1196 of 2016 by the learned District Judge-4 And Additional Sessions Judge, Kalyan, District Thane..
- 2) The applicant is the original complainant in CR No.I-40 of 2016 and respondent No.2 is an accused in the said crime registered with Vishnunagar Police Station, Dombivli (W), District-Thane under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

The record reveals that the respondent No.2 had preferred an application for pre-arrest bail bearing Anticipatory Bail Application No.366 of 2016 below Exhibit-1 before the District Judge-4 and Additional Sessions Judge, Kalyan. The concerned Court by its Order dated 26.4.2016 passed below Exhibit-1 was pleased to reject the said application and vacated the interim relief granted earlier by it

earlier.

The respondent No.2 thereafter preferred Anticipatory Bail Application No.798 of 2016 before this Court. This Court (Smt. Mridula Bhatkar, J.) by its Order dated 3.5.2016 did not grant pre-arrest bail to the respondent No.2 and the said application as far as respondent No.2 (Applicant No.4 in the said application) was rejected. The reasons for not granting pre-arrest bail to the respondent No.2 are elaborately mentioned in the said Order dated 3.5.2016. It is to be noted here that other two accused in Anticipatory Bail Application NO.798 of 2016 namely Vasudev Munde and Dnyaneshwar Munde were granted interim relief by the said Order dated 3.5.2016 by this Court. The record further reveals that the concerned Investigating Officer did not take any effective steps in arresting the respondent No.2 despite there being rejection of interim relief in his favour by the aforesaid orders. The respondent No.2 therefore preferred an application for pre arrest bail bearing Criminal Anticipatory Bail Application No.1196 of 2016 before the District Judge-4 and Additional Sessions Judge, Kalyan. The application is preferred on the ground that after rejection of the pre-arrest bail of the respondent No.2 by this Court two co-accused persons were granted interim bail and two other arrested accused have been released on bail by the said Court and that is the change in situation. The pleadings to that effect are made in para-7 of the said application. By the impugned Order dated 19.9.2016 now the respondent No.2 has been granted interim anticipatory bail.

3) Feeling aggrieved by the said Order of interim bail, the present applicant-original complainant has preferred this application for cancellation of said interim relief granted in favour of the respondent No.2.

4) At the outset, it is to be noted here that as per record the application for pre-arrest bail preferred by the respondent No.2 was turned down by an Order dated 3.5.2016 passed by this Court and despite that the Investigating Officer did

not take any effective steps or pains to arrest the respondent No.2. The respondent No.2 by making absolutely vague pleadings in Criminal Anticipatory Bail Application No.1196 of 2016 before the trial Court made out a case that there is change in circumstance. However, as a matter of fact after rejection of the anticipatory bail of the applicant by this Court till today there is no change in circumstance. The Anticipatory Bail Application 798/2016 is pending on the file of this Court for its final adjudication. The District Judge-4 and Additional Sessions Judge, Kalyan without verifying the record, merely on the basis of statement made by the respondent No.2 granted interim anticipatory bail to the respondent No.2. The Order passed by the Trial Court is indubitably contrary to the material available on record as once this Court rejects the pre arrest bail application, the propriety demands that the learned Trial Court ought not have entertained such a successive application for pre-arrest bail. That, the said Cri. Anticipatory Bail Application NO.1196/2016 is entertained by the Trial Court without taking into consideration the said vital aspect. . That the said Order is passed without there being any substantive change in circumstance. The Anticipatory Bail Application No.1196 of 2016 itself is is not tenable before the trial Court.

5) In view of the above, the Order dated 19th September 2016 passed by the Trial Court is hereby quashed and set aside. Application is allowed in terms of prayer clause (a).

(A.S. GADKARI, J.)