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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 723/2014

IN

ANTICIPATORY BAIL APPLICATION NO.1785 of 2014

WITH

CR. APPLICATION No. 1001/2015

IN

CRIMINAL APPLICATION No. 723/2014

Priyanka Pakvasa

..Applicant.

Vs

Sameer Pakvasa and Anr

..Respondents.

Mr Archit Jaykar a/with Trupti Khadse, Surabhi Agrawal,
Mandar Bhangale i/by Jaykar & Partner for the applicant.

Mr A.H.Ponda a/with Jatin Segal i/by V.B. Dhingreja for
the Respondent No.1

Smt.P.P.Shinde, APP for the State-Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 25th January, 2016

P.C.

1) The present application under section 439 (2) of the Code
of Criminal Procedure has been filed by the original complainant

thereby seeking cancellation of the anticipatory bail granted to the respondent no.1 by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in ABA No. 1785/2014 by its order dated 3.12.2014.

2) The applicant and the respondent No.1 are husband and wife. That it is the second marriage of both the applicant and the respondent No.1. They got married at Mumbai on 28.4.2011. Out of the wedlock the applicant and the respondent no.2 are having a daughter. The applicant has filed the First Information Report (FIR) bearing No. 374/2014 dated 11.9.2014 with the Khar Police station, Mumbai under sections 498(A), 406, 341 of the IPC.

3) That the complainant/applicant in the said FIR, in brief, has alleged that, the respondent no.1 is addicted to liquor and drugs. That he did not provide any attention towards the applicant and master Adit, the son, begotten from the first wife of the respondent no.1. He also forged certain documents including negotiable instruments. That the respondent no.1 had also committed the criminal breach of trust.

4) As per the record after the lodgment of the said FIR on 11.9.2014, the respondent no.1 immediately preferred an application for pre-arrest bail in the Court of Sessions for Greater Mumbai and he was initially granted interim relief. The said ABA No. 1785/2014 was heard finally by the learned trial Court and granted pre-arrest bail to the applicant by an order dated 3.12.2014. The said order is impugned herein.

5) Heard the learned counsel for the applicant, the learned counsel for respondent no.1 and the learned APP at length and also perused the record produced before me.

6) The learned counsel for the applicant submitted that during the intervening period between interim relief and final relief, the respondent no.1 forged the signature of the applicant and tried to withdraw certain amounts from the Bank. That he also tried to tamper with the evidence. He submitted that due to the pre-arrest bail granted to the applicant, the police could not make any effective recovery of the articles mentioned in the F.I.R. He submitted that for the recovery of said articles, the custody of the applicant at the hands of the police is necessary

and required.

7) He submitted that the accusations made against the applicant survives till the conclusion of the trial and, therefore, the pre-arrest bail granted by the impugned order can be cancelled at any point of time. In support of his contention, he relied upon the following two decisions;

(i) *1998 Cri LJ 1762*
Natturasu & Ors v. State by S.I. of Police,
Mannirpallam Police Station [delivered by
the learned Single Judge of the Madras
High Court]; and

(ii) *(2005) 3 Mah LJ 916*
Prakash Rasiklal Dhariwal v. Central
Bureau of Investigation & Anr [delivered
by the Division Bench of this Court]

8) The learned counsel appearing for the respondent No.1, on the other hand, submitted that the F.I.R. is lodged on 11.9.2014, the respondent no.1 thereafter moved anticipatory bail application before the Court of Sessions and he was initially granted interim relief by the said Court. That his anticipatory bail application No. 1785/2014 was heard and finally decided on 3.12.2014. That after completion of investigation the police

have filed charge-sheet in the said offence on 5.1.2015. That the respondent no.1 has been released on regular bail by the Metropolitan Magistrate on 6.1.2015. He submitted that as the respondent no.1 has been released on regular bail after filing of the charge-sheet, the present application for cancellation of the anticipatory bail does not survive as the order of granting anticipatory bail has already come to an end and the order granting him regular bail on 6.1.2015 is in force. He further submitted that the respondent no.1 has not breached any of the conditions of the bail order till date. In support of his contention the learned counsel for the respondent no.1 relied on the following two decisions;

(i) *(2002) 1 CAL LT 146 (HC)*

Quality-Inn-Resort & Travels Pvt Ltd. v. State of West Bengal & Ors. [delivered by the Division Bench of Calcutta High Court] and

(ii) *2014 (1) Crimes 359 (Raj)*

Rajarani Yadav v. State of Rajasthan & Anr [delivered by the learned Single Judge of Rajasthan High Court]

9) A useful reference at this stage can be made to the decision of the Apex Court in the case of Gurcharansingh and Ors Vs. State (Delhi Administration) wherein it is held that, ordinarily the High Court will not exercise its discretion to interfere with an order of bail granted by the Sessions Judge in favour of an accused. It is well settled by a catena of decisions of the Apex Court that there has to be cogent and overwhelming circumstances warranting interference with the order of the bail already granted. I am unable to persuade myself from the material on record that any such cogent and overwhelming circumstance exists in the present case which would compel this Court to cancel the order, earlier granted in favour of the respondent no.1.

10) That apart, the issue involved in the present application is whether the order granting anticipatory bail can be cancelled after filing of charge-sheet and the accused persons are released on regular bail thereafter. The answer to the said issue is 'No'. In taking this view, I am fortified by the judgment delivered by a Division Bench of the Calcutta High Court in the

case of ***Quality-Inn-Resort & Travels Pvt Ltd.*** (supra). The Division Bench of the Calcutta High Court in the said decision in paragraph 7 has held as under :

“That apart, as it has been rightly pointed out that pursuant to the order passed by the Division Bench, the accused persons have already surrendered before the learned Chief Metropolitan Magistrate, Calcutta and were granted regular bail, in our view, the application for cancellation of Anticipatory Bail loses much of its force as the original order of Anticipatory Bail becomes non-east by virtue of the order of regular bail passed by the learned Chief Metropolitan Magistrate, Calcutta. The cancellation of the said order, in our opinion, does not survive.”

11) The learned Single Judge of the Rajasthan High Court has also taken a similar view in the case of ***Rajarani Yadav Vs. State of Rajasthan and Anr*** (supra).

It is to be noted that, however, this rule may not be applicable in case of a heinous crime such as waging war against the State, murder, dacoity with murder etc., wherein at a later stage of investigation, it is revealed from the evidence collected, that the custody of the accused is necessary for the reasons to be recorded therein.

12) After taking into consideration the facts of the

present case that the respondent no.1 was released on anticipatory bail by an order dated 3.12.2014, after completion of investigation the police have filed charge-sheet in the said offence on 5.1.2015 and he has been released on regular bail by the Metropolitan Magistrate on 6.1.2015, in my view, after applying the ratio of the judgment in the case of ***Quality-Inn-Resort & Travels Pvt Ltd*** (*supra*), the application for cancellation of anticipatory bail loses much of its force as the original order of anticipatory bail becomes non-est by virtue of the order of regular bail passed by the Metropolitan Magistrate, Mumbai and therefore, the cancellation of the said order does not arise.

14) In view of the above, the Criminal Application No. 723/2014 is dismissed. As the Criminal Application No. 723/2014 is dismissed, Criminal Application No. 1001/2015 does not survive and the same is accordingly disposed of.

(A.S. GADKARI, J.)