

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.6 OF 2016

(Kailash s/o Sankelal Pawar ..vs. State of Maharashtra, through PSO, PS Kalmeshwar Gramin)

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 08-03-2016

Heard Shri A.K. Bhangde, Advocate for the applicant and Shri S.S. Doifode, Additional Public Prosecutor for the non-applicant.

2. The applicant has filed this application under Section 438 of the Code of Criminal Procedure apprehending arrest in crime registered against him for offences punishable under Sections 147, 148, 149, 336, 427, 324 and 326 of the Indian Penal Code. This Court, by the order dated 07-01-2016, while issuing notice to the non-applicant, granted interim protection to the applicant. On 22-02-2016, the learned Additional Public Prosecutor had submitted that identification parade was to be conducted on 17-02-2016, however, the applicant had not attended the police station and had not co-operated with the investigation. Accepting the statement made on behalf of the non-applicant, the *ad-interim* order granted on 07-01-2016 was recalled.

The applicant has not controverted on affidavit, the complaint of the prosecution that the applicant is not

co-operating in the investigation.

3. Today the learned Additional Public Prosecutor has submitted that two further attempts to conduct the identification parade have been made and the applicant is called, however, he has not co-operated with the investigation.

4. Shri A.K. Bhangde, Advocate for the applicant has submitted that the submission made on behalf of the non-applicant is not correct and the applicant was not summoned on any occasion. Relying on the third proviso below clause (ii) of sub-section (1) of Section 437 of the Code of Criminal Procedure, it is submitted that bail cannot be refused only on the ground that the accused may be required for being identified by the witnesses during investigation. The submission made relying on the above proviso is misconceived. The issue in the present case is not as to whether the applicant can be denied bail on the ground that his presence would be required for identification parade, but the issue is as to whether the applicant is entitled for pre-arrest bail though he has avoided to co-operate with the investigation.

5. Considering the facts on record, I am not inclined to show any indulgence. The application is dismissed.

Criminal Application (APPP) No.22 of 2016.

In view of the disposal of main application, the application praying for grant of time to file certified copy of the order passed by the Additional Sessions Judge has become infructuous. It is disposed accordingly.

JUDGE

pma