

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (ABA) NO.36/2016

Taj Mohammad Amir Mohammad..vs..The State of Maharashtra through PSO P. S. Ganeshpeth

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

Court's or Judge's orders

Mr. S. A. Chaudhari, Advocate for applicant.
Mr. N. B. Jawade, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATE : APRIL 15, 2016

A casual approach on the part of the Court below can be seen in this matter. The applicant had approached this Court by filing Criminal Application (ABA) No.360/2015 for grant of anticipatory bail since he was apprehending arrest in connection with Crime No.115/2015, registered with Police Station, Ganeshpeth, Nagpur for the offence under Section 143, 147, 148, 149, 324, 504, 307, 504 of the IPC and under Sections 4 and 25 of the Arms Act.

Mr. Chaudhari, the learned counsel for the applicant, strenuously urged before this Court in the said criminal application for anticipatory bail. However, after hearing the counsel for the applicant, this Court on 21.08.2015 was pleased to reject the anticipatory bail application filed on behalf of the present applicant.

It appears that thereafter another bail application was filed again before the learned trial Judge. The said application was registered as Misc. Criminal Application No.2614/2015 and the learned Incharge Additional Sessions

Judge and District Judge-12, Nagpur on 23.10.2015 granted ad interim anticipatory bail in favour of the present applicant. The said order remained in force till 08.01.2016, the day on which the regular Court rejected the application. Hence, this second application.

Heard learned counsel for the applicant for some time. The submission of the learned counsel for the applicant is that the applicant has not suppressed any material from the learned Judge of the Court below who has granted ad interim anticipatory bail. He submitted that in the application itself, it has been mentioned that this Court has rejected the bail application.

Though the order passed by the learned incharge Judge who granted ad interim anticipatory bail is not placed on record, the learned counsel for the applicant has handed over certified copy of the said order during the course of hearing of the same. It is taken on record and marked 'X' for identification. A perusal of the said order shows that the learned Judge of the Court below was swayed away with the submission of the learned counsel, who represented the applicant before the Court, that the applicant was not absconding. Worth to note here is that the charge-sheet was filed against the present applicant under Section 299 of the Code of Criminal Procedure. The learned Judge of the Court below has clearly missed this aspect while considering the application and in my opinion incorrectly granted ad interim anticipatory bail.

In the present case, the applicant is facing serious charge of attempt to murder. According to the learned

counsel for the applicant, the injuries suffered by the injured cannot be attributed to the weapon that have been ascribed to the present applicant to attract the provisions of Section 307 of the IPC as the injury is not sine quo non for attracting the provisions of Section 307 of the IPC. The FIR and the other evidence available on record shows that when the first informant tried to pacify the present applicant, that time, the present applicant gave a sword blow, however, with the grace of God, the said blow was ducked by the complainant.

In that view of the matter, the application is rejected.

JUDGE