

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

Criminal Application [ABA] No.592 of 2016

(Madhukar Ramchandra Rathod

vs.

The State of Maharashtra, through P.S.O. Pusad [Gramin], District Yavatmal)

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

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Court's or Judge's Orders

Shri A.M. Haque, Advocate for the Applicant.
Shri C.A. Lokhande, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 5th OCTOBER, 2016.

Heard the learned Counsel for the applicant and the
learned A.P.P. for the State.

After haring this matter, the learned Counsel for the
applicant seeks leave of the Court to withdraw this application.
This prayer is rejected for the reason that similar prayer made
earlier was granted by this Court and thereafter the applicant
has approached this Court once again seeking grant of
anticipatory bail under Section 438 of the Code of Criminal
Procedure.

The learned Counsel for the applicant relies upon
the judgment of this Court in the case of Kamlesh s/o Dhirajlal
Gandhi vs. State of Maharashtra and another – 2007(2)
Mh.L.J. 850, wherein it has been held that second or subsequent
bail application under Section 438 of the Code of Criminal
Procedure can be filed, if there is a change in the facts and

circumstances, in order to support his contention that filing of the charge-sheet on 17/06/2016 in this case has marked a change in circumstances and, therefore, this application is maintainable.

There can be no dispute about the principle of law stated in the case of *Kamlesh Gandhi (supra)*. Second or subsequent bail application filed under Section 438 of the Code of Criminal Procedure is maintainable, if it has been filed because of change in circumstances. Filing of the charge-sheet certainly marks a change in some of the relevant/if not all the circumstances and, therefore, this application is maintainable. But, then the Court would also have to see if there is change in other relevant circumstances or not. The answer to the question in the present case, in my view, is in the negative. The other circumstances, which constitute important considerations for granting or rejecting an application filed under Section 438 of the Code of Criminal Procedure could be in the nature of the custodial interrogation of the applicant, the possibility of the applicant tampering with the prosecution witnesses, the possibility of the applicant making himself unavailable for the trial, seriousness of the offence and so on and so forth. Insofar as the other circumstances are concerned, I do not think that there is any change in them. The applicant has never made himself available for his interrogation, leave alone the custodial

interrogation, when in fact, the facts and circumstances of the case show that his custodial interrogation is very much necessary. The way the applicant has conducted himself in this case also gives rise to a possibility of his evading the course of justice. Then, the various candidates have been induced or coerced into making payment to him and this would also give rise to a reasonable possibility of the applicant influencing the prosecution witnesses.

Considering all these factors and also the fact that so far there has been no change in the circumstances, this application deserves to be rejected and is rejected accordingly.

**sdw*

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true
and correct copy of the original signed order.

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P.A. to the Hon'ble Judge.