

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2735 OF 2017

1. Devidas s/o Rambhau Gaikwad **... Applicants**
Age 65 years, Occu: Agri.
2. Parvatabai w/o Devidas Gaikwad
Age 52 years, Occu: Household
3. Mirabai w/o Ashok Gaikwad
Age 28 years, Occu: Household
All r/o Thengewadgaon, Tq. Mantha
Dist. Jalna.

VERSUS

The State of Maharashtra **... Respondent**
Through Investigating Officer,
Mantha Police Station,
Dist. Jalna.

Mr. Ramchandra J. Nirmal, Advocate for the applicants
Mr. S. B. Joshi, APP for the State.

CORAM : K. L. WADANE, J.

DATE : 22nd June, 2017

ORDER:

1. Heard Mr. Nirmal, learned counsel for the
applicant and Mr. Joshi, learned APP for the State.

2. Present Criminal Application is filed under
section 438 of the Code of Criminal Procedure for grant
of anticipatory bail in connection with Crime
No.67/2016, registered with Mantha Police Station,
District Jalna for the offences punishable under
sections 302, 304 (B), 498(A) read with section 34 of
the Indian Penal Code, 1860.

3. Mr. Nirmal, the learned counsel appearing for the applicants submits that earlier, applicant no.1 was arrested and was released on regular bail, so also applicant No.2 and Applicant No.3 were enlarged on anticipatory bail. However, after filing of the charge-sheet, the applicants apprehend their arrest in the aforesaid crime as the offence punishable under section 302 IPC is added. The learned counsel has relied on the decision of the Hon'ble Apex Court in the case of **Ravinda Saxena Vs. state of Rajasthan, reported in (2010) 1 Supreme Court Cases 684**. The observations of the Hon'ble Apex court in Para Nos.7 and 8 reads thus:

"8. We are of the considered opinion that the approach adopted by the High Court is wholly erroneous. The application for anticipatory bail has been rejected without considering the case of the appellants solely on the ground that the challan has now been presented."

"8. We may notice here that the provisions with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in its Forty-first Report dated 24.09.1969. The recommendations were considered by this Court in a Constitution Bench decision in Gurbaksh Singh Sibbia Vs. State of

Punjab. Upon consideration of the entire issue this court laid down certain salutary principles to be followed in exercise of power under section 438 Cr.P.C. by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or the court of Session, it must apply its own mind on the question and decide when the case is made out for granting such relief."

4. Looking to the observations of the above case, anticipatory bail in case of non-bailable offence is maintainable even after filing of the charge sheet. It is material to mention here that after considering the evidence on record, the learned Sessions Judge has released applicant no.1 on regular bail and applicant nos. 2 and 3 on anticipatory bail.

5. In view of the above circumstance, I am of the opinion that custodial interrogation of the applicants is not needed and therefore, the applicants can be enlarged on anticipatory bail. Hence following order:

O R D E R

- i. In the event of arrest of the applicants in connection with Crime No. 67/2016, registered with Mantha Police Station, District Jalna,

they shall be released on bail on their
executing P.R. Bond of Rs. 25,000/- [Rs.
Fifteen thousand only] each, with one solvent
surety in the like amount.

ii. The applicants shall not tamper with prosecution
evidence in any manner and shall cooperate with
the investigating officer in further
investigation.

iii. Criminal application disposed of.

(K. L. WADANE, J.)

JPC