

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders		Court's or Judge's orders
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CRIMINAL APPLICATION NO.3290 OF 2017

SURENDRA S/O. LAXMAN GHOTANKAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr.Kale Ajeet B.
APP for Respondent/State: Mr.D.R. Kale.

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CORAM : V.L. ACHLIYA, J.
Dated: OCTOBER 06, 2017

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The applicant has moved this application seeking anticipatory bail in connection with offence registered u/s 420 of IPC with Mukundwadi Police Station, District Aurangabad at CR No.I-271/2012.

2. In nutshell, it is contention of the learned Counsel for applicant that the dispute of civil in nature has been given colour of criminal case. The applicant has filed Criminal Application No.470/2013 before this Court seeking quashing of FIR. The said application was decided vide order dated 17th June, 2013. The Court has made following observations and passed the order, as below:

“6. At this state we cannot address the issue as to whether offence is constituted. But, considering the nature of allegations made in the complaint and the submissions advanced we find that the interests of the applicant could be protected as the applicant apprehends arrest at the hands of police. It is submitted that the applicant has not been arrested so far. It is submitted that the applicant will cooperate with the police as and when necessary.

ORDER

A) The respondent-investigating officer of Mukundwadi Police Station Aurangabad shall not take any coercive action against the applicant in respect of First Information Report No.I-271/2012 dated 24-8-2012 under section 420 of the Indian Penal Code.

B) The applicant would cooperate in the investigation and remain present before the investigating officer after receipt of intimation/notice in this regard.

C) In case final report filed by police is adverse to the interest of the applicant, the applicant would be entitled to resort to appropriate remedies as permissible in law.

D) All questions on merits agitated before this Court are kept open.

8) The criminal application is disposed of.”

3. Learned Counsel for applicant therefore, submits that as per the order passed it was incumbent upon the Investigating Officer to have issued notice to applicant. He submits that

applicant has now learnt that Investigating Officer has filed charge-sheet.

4. Learned APP submits that charge-sheet has already been filed in the matter pursuant to CR No.I-271/2012 registered with Mukundwadi Police Station, District Aurangabad, in the year, 2014 in the Court of J.M.F.C., Aurangabad and the case is registered as RCC No.927/2014.

5. On due consideration of the submissions advanced, I am of the view that applicant can very well approach the trial Court and seek bail from the trial Court. In view of the order passed by the Division Bench of this Court quoted above, it was expected on the part of the Investigating Officer to have issued notice before filing of charge-sheet. Since charge-sheet has already been filed in the matter, the applicant can appear before the trial Court and seek bail from the trial Court. I am, therefore, inclined to pass the following order:

: ORDER :

i) Application seeking anticipatory bail is rejected for the reason that charge-sheet has already been filed in the matter.

ii) The applicant is directed to appear

before the trial Court within four weeks from the date of this order and apply for bail.

iii) The trial Court is directed that on appearance of the applicant and filing of application, the application be decided within one week from the date of filing of the application.

iv) In the mean time, applicant be not arrested till disposal of application to be made by the applicant before the trial Court

v) Application stands disposed of in above terms.

(V.L. ACHLIYA,J)