

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 81 OF 2017

Shivaji Bhagwan Maske	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Tushar N. Sonawane, Advocate for the Applicant.
Mr. Deepak Thakery, APP for Respondent – State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 17th February, 2017.

P.C.:

This Application is moved for anticipatory bail under section 438 of Cr. P.C. The applicant-accused is apprehending arrest in C.R. No. I-270 of 2010 registered with Pandharpur Taluka Police Station for the offences punishable under sections 328 r/w. 34 of the Indian Penal Code and under section 65(e)(f)(kh) of Maharashtra Prohibition Act. The offence is registered at the instance of one police constable Kashinath Shivgonda on 5th October, 2010.

2. The police on secret information raided the premise at Laxmi Takli, Taluka Pandharpur and found that some persons were manufacturing country liquor and after seeing the police, they ran away. The police could nab one of them. The applicant/accused is

one who ran away.

3. The learned counsel for the applicant/accused submitted that the applicant/accused was never arrested in this offence. This is matter of the year 2010. When the matter reached before the Learned Judicial Magistrate First Class, he issued warrant against the applicant on 18th June, 2016. Thereafter the applicant filed Anticipatory Bail Application before the learned Sessions Judge, however, the learned Sessions Judge has taken a view that once the warrant is issued, then in view of the case of Ambalal P. Rashamwala vs. State of Maharashtra, reported in 1992 Cr. L.J. 2373 (Bom.), the Application for anticipatory bail is not maintainable. However, the learned counsel further submitted that thereafter in the case of Akhalaq Ahmed F. Patel vs. State of Maharashtra, reported in 1998 Cr. L.J. 3969 (Bom.), the Single Judge of this Court has taken a view that Anticipatory Bail Application can be entertained though the warrant is issued, if there is no arrest.

4. Learned APP opposed the Application. He submitted that charge sheet is filed in this matter and the warrant is issued under section 70 of Cr. P.C., hence this Application is not maintainable, as it

is covered under the case of Himanshu @ Hemant Rajendra Bhatt vs. State of Maharashtra in Criminal Anticipatory Bail Application No. 492 of 2014 on 30th April, 2014.

5. In view of the submissions made by the learned counsel for the applicant/accused and the learned APP, I direct the applicant/accused to surrender before the learned Magistrate on 20th February, 2017 at 11 a.m. and place the Application for cancellation of warrant before the learned Magistrate.

6. The learned Magistrate to consider the ingredients of Section 328 of the Indian Penal Code in view of the nature of offence.

7. Anticipatory Bail Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)