

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.178 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.214 OF 2016

Dr. Avinash Baswantrao Bhosale .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr.Pritesh A. Burad, Advocate, for the Applicant
Mr.S.S.Pednekar, APP, for the Respondent – State
Mr.P.G.Sarda, Advocate, for the Complainant/Intervenor

CORAM : REVATI MOHITE DERE, J.

DATE : 20.04.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks the following relief;

“(B) The Registry/Account branch of this Hon'ble Court may kindly be directed to refund the amount deposited by the Applicant in this court.”

3. Learned counsel for the Applicant submits that the Applicant had deposited an amount of Rs.27,00,000/- Rs.4,00,000/- & Rs.1,00,000/- in the Registry of this Court without prejudice to his rights & contentions. He submits that

pursuant to the undertaking given by the Applicant to deposit Rs.67,00,000/-, the Applicant was granted pre-arrest bail. He submitted that thereafter, the Applicant could not deposit the balance amount pursuant to the undertaking given by him to this Court and hence, the Application was withdrawn. He submits that pursuant to the withdrawal of the Anticipatory Bail Application, the Applicant has been arrested and he is presently in custody.

4. Mr. Sarda appearing for the Complainant/Intervenor submitted that as far as the amount of Rs.43,595/- is concerned, the said amount be paid to the first informant - Amol Vasant Jadhav. He submitted that learned counsel appearing for the Applicant had given the Applicant's 'No Objection', to the said amount being paid to the first informant and that the same is recorded in the Order dated 22.02.2016 passed by this Court (CORAM : SMT. ANUJA PRABHUDESSAI, J.) in ABA No.214 of 2016.

5. Learned APP is unable to show under what provision the said amount deposited by the Applicant can be retained by this Court.

6. Perused the papers.

7. It will be necessary to set out a few orders as were passed by this Court in ABA No.214 of 2016. Vide Order dated 04.02.2016, this Court (CORAM : SMT. ANUJA PRABHUDESSAI, J.) granted interim bail to the Applicant. It was recorded in the said Order dated 04.02.2016 that without entering into the merits of the matter, an attempt should be made to settle the matter amicably. The Applicant was directed to explore the possibility of settling the dues of the aggrieved persons. On 22.02.2016, learned counsel for the Applicant, made a statement that the Applicant is ready to deposit an amount of Rs.43,595/- towards price of 23 tones of sugar cane and that the Applicant has no objection, if the said amount is paid to the first informant. This Court (CORAM : SMT. ANUJA PRABHUDESSAI, J.) recorded the same and directed the Registry to accept a sum of Rs.43,595/- and to pay the same to the first informant - Amol Vasant Jadhav in C.R.No.5 of 2016 registered with the Pangari Police Station, District-Solapur. It is also recorded in the said order that the Applicant will deposit an amount of Rs.13,13,74,840/- in this Court in four months spread over equal instalments, without prejudice to the rights and contentions of

the parties. An instalment of Rs.3,28,43,712/- was to be deposited on or before 21.03.2016 and the balance amounts were to be deposited by the end of 30.04.2016, 31.05.2016 & 30.06.2016.

8. On 29.03.2016, it was pointed out by the learned counsel for the Applicant that the amounts as directed by this Court vide Order dated 22.02.2016 were not deposited by the Applicant. It is recorded in the Order dated 29.03.2016 that the Applicant had brought a demand draft of Rs.25,00,000/- and as such, a direction was given to the Registry to accept the said Demand Draft. Learned counsel for the Applicant had submitted that the Applicant was ready to give an undertaking and the schedule within which he would deposit the first instalment of Rs.3,28,43,712/-. The statement of the learned counsel for the Applicant was accepted and the matter was adjourned to 30.03.2016 to enable the Applicant to give an undertaking. On 30.03.2016, the Applicant, who was present in Court tendered an undertaking and sought time to comply with the Order dated 22.02.2016. In the said undertaking, the Applicant had undertaken to deposit an amount of Rs.1,00,00,000/- on or before 04.04.2016 and the balance amount of the first

instalment i. e. 2,03,43,712/- on or before 13.04.2016. The said undertaking was taken on record. It was observed in the said order that if the said amount was not deposited as per the undertaking, the interim relief would stand vacated forthwith. Accordingly, the matter was adjourned to 05.04.2016 to ensure compliance of the first instalment deposited in the Registry of this Court.

9. On 05.04.2016, learned counsel for the Applicant had submitted that the Applicant was not able to abide by the undertaking despite taking all efforts. It was observed in the Order dated 05.04.2016, that the Applicant had brought three demand drafts of Rs.27,00,000/-, Rs.4,00,000/- & Rs.1,00,000/- drawn in favour of the High Court, Registrar, Appellate Side, Mumbai. Learned counsel for the Applicant tendered a fresh undertaking of the Applicant dated 05.04.2016 stating therein, that the Applicant will deposit an amount of Rs.2,00,00,000/- on or before 20.04.2016 and the balance amount of the first instalment i. e. Rs.71,43,712/- on or before 27.04.2016. The said undertaking was taken on record and the Registry was directed to accept the three demand drafts. The interim relief was, accordingly, extended. On 21.04.2016, the Applicant failed to

comply with any of the undertakings given by him and hence, the interim relief was vacated. On 13.06.2016, ABA Nos.262 and 214 of 2016 were withdrawn by the Applicant. This Court (CORAM : A.M.BADAR, J.) allowed the Applicant to withdraw the said Application and accordingly, the said Application was disposed of. It appears that subsequently, the Applicant was arrested and presently he is in custody. The said amounts that was deposited from time to time by the Applicant were without prejudice to his rights & contentions. In view of the undertaking given by the Applicant, without prejudice to his rights & contentions to deposit the amounts and to settle the said dispute, the interim relief was granted.

10. It is a matter of record, that the Applicant could not abide by the undertaking given by him and subsequently, withdrew his Anticipatory Bail Application. It also appears that pursuant to the undertakings which were given by the Applicant, without prejudice to his rights & contentions, the Applicant had deposited a sum of Rs.27,00,000/-, Rs.4,00,000/-, Rs.1,00,000/- & Rs.10,00,000/- i. e. a total sum of Rs.67,00,000/- was deposited in the Registry of this Court. The Applicant was arrested subsequently. Learned APP is unable to point out how

the said amounts can now be retained in the peculiar facts of this case. It may also be noted, that the aforesaid Application was adjourned several times to enable the learned APP to take instructions, however, the investigating officer failed to attend and give any instructions to the learned APP.

11. Considering the aforesaid, the Application is allowed on the following terms & conditions:-

O R D E R

(i) Registry to refund the said amount of Rs.67,00,000/- to the Applicant alongwith accrued interest, if any, after deducting a sum of Rs.43,595/-. Registry to pay the said amount of Rs.43,595/- to the first informant - Amol Vasant Jadhav pursuant to the Order dated 22.02.2016; on producing proof of his identity.

12. Accordingly, the Application is disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)