

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 505 OF 2017

Amit Mahendra Pandey and another

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Harideep Singh Advocate for the Applicant.

Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 22nd MARCH, 2017.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 115 of 2017 registered at Samta Nagar Police Station for offence punishable under sections 498 (A), 323, 504, 506 r/w 34 of the Indian Penal Code.

2) At the outset, the learned APP submits that an application seeking pre-arrest bail is pending before the Sessions Court and therefore, it would not be appropriate to consider this application. Upon query made by this Court, the learned counsel for the applicant submits that inadvertently applicant had

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approached Additional Sessions Judge who was assigned with matters pertaining to Nalasopara and was seeking bail in crime no. 115 of 2017 registered with Nalasopara Police Station. The learned Sessions Judge at Vasai, in view of the guidelines of the Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273** had granted interim protection in favour of the applicants. It was brought to notice of the learned Sessions that in fact offence is registered at Tulinj Police Station and the Additional Sessions Judge dealing with matters registered at Nalasopara Police Station has no jurisdiction. To make matters simple, the learned counsel appearing for the applicants had withdrawn the said application and filed a fresh application before the court dealing with matters registered at Tulinj Police Station. Along with application seeking pre-arrest bail, dated 21/03/2017, an application was also filed seeking interim relief during the pendency of the application.

3) The learned counsel for the applicants submits that learned counsel for the applicants was not given opportunity to argue the application seeking interim relief and the matter was adjourned in order to enable the respondent

to take instruction. The learned APP upon instructions submits that the matter is posted for hearing on 27/03/2017. It is stated in the application seeking interim relief that a notice under section 41 (A) was served upon the applicants on 06/03/2017 and therefore, applicants have filed application under section 438 of Code of Criminal Procedure, 1973.

4) Instead of reporting to the police station or sending reply, applicants had served upon the police station a copy of the application which was filed under section 438 of Code of Criminal Procedure, 1973 before the Sessions Court. In the notice dated 06/03/2017, police had requested the applicants to appear before the police station within 7 days from the date of receipt of the notice.

5) The learned counsel for the applicants submits that since applicants were apprehending arrest, they chose to file an application seeking pre-arrest bail as was advised. As on today, it would not be appropriate to consider the present application on merits since the learned Sessions Court is seized with the matter. The learned Sessions Court is hereby directed to hear the

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application on the scheduled date i.e. on 27/03/2017 and dispose of the same in accordance with law.

6) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)