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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 862 OF 2017

Maahesh Mohandas Lalchandani

..Applicant.

Vs

The State of Maharashtra

..Respondent.

Mr. Rajiv Chavan, Senior Counsel with Ms. Priyanka Chavan and
Ms.Sanjana Pardeshi i/b Law Global Advocates for Applicant.
Dr. F.R. Shaikh, Public Prosecutor with Ms. Veera Shinde, APP
for Respondent-State.

CORAM: A.S. GADKARI. J.

DATE: 20 JULY 2017.

P.C.:

1] This is second application for pre-arrest bail.

The earlier Anticipatory Bail Application No.1589 of 2016
was 'dismissed as withdrawn' by this Court, by an Order dated 25.4.2017.
The said Order reads as under:

“1. After hearing the learned counsel for the
applicant at length when this Court was not inclined to
grant any relief, the learned counsel on instructions
seeks leave to withdraw the application with liberty to
surrender before the Investigating Officer on or before

11.00 O'clock on 3.5.2017.

2. Leave and liberty granted.

3. Application is dismissed as withdrawn.”

2] Heard Mr. Chavan, the learned Senior Counsel for the applicant, the learned Incharge Public Prosecutor, at length and also perused the entire record.

3] The learned Senior Counsel for the applicant submitted that after rejection of the earlier Anticipatory Bail Application, there is a change in circumstance i.e. the applicant has received hand-writing expert's report dated 5.6.2017 indicating that the signatures on the agreement are not tampered with or forged and the hand-writing expert by the said report has exonerated the applicant from the alleged crime committed by him. He further submitted that the Advocate for the applicant has also forwarded the report to the Public Prosecutor on earlier occasion, however, the Police did not take steps to verify it. The learned Senior Counsel has placed reliance on the following decisions of the various High Courts:

- (1) *Atul Laxmishankar Bhatt Vs. State of Gujarat in Criminal Misc.Application No.6496 of 2011 [dated 27.06.2011, Gujarat High Court]*

- (2) Mohammad Yakub V. State of Karnataka [2014 SCC OnLine Kar 7274].
- (3) *Mathloob Abdul Gafoor Qureshi & Anr. Vs. The State of Maharashtra & Anr. in Anticipatory Bail Application Nos.861, 945, 862, 863, 864, 948, 865, 949, 872, 873, 946, 944 and 947 of 1998 [dated 20.04.1998, Bombay High Court]*

He submitted that, in view of the facts mentioned in the said decisions of various High Courts, receipt of hand-writing expert's report after rejection of earlier anticipatory bail application, itself is a change in circumstance and therefore the applicant may be extended the benefit of the same by granting pre-arrest bail.

4] Mr. Shaikh, the learned Public Prosecutor submitted that, after rejection of the first pre-arrest bail application by an Order dated 25.4.2017, the applicant instead of surrendering before the Investigating Officer, absconded and is not traceable to the Investigating Agency. He submitted that the Investigating Officer has made several attempts to arrest the applicant, however, the applicant was not traceable at his known addresses. Mr. Shaikh produced the the papers of investigation and submitted that it is not only a mere allegation that the signatures on the stamp paper i.e. agreement/and or partnership deed are forged, but it is the

precise allegation against the applicant that the stamp papers which were issued serially in the name of Saburi Construction were tampered with and forged by changing the date of issuance on stamp paper and the name of the recipient of the stamp paper with a view to defraud and dupe the Government. He submitted that the stamp paper used for executing the deed of partnership dated 5.4.2008 was also tampered with and forged by the applicant. He submitted that there is no change at all in any circumstance after the rejection of the first application and in view thereof the present application may be summarily rejected.

5] At the outset, it is to be noted here that, on an earlier occasion after hearing the learned Counsel for the petitioner at length and after perusing the entire record made available before this Court at the relevant time, when this Court was not inclined to grant any relief and in fact was inclined to reject the application by making adverse observations against the applicant, the learned Counsel for the applicant after taking instructions, sought leave to withdraw the application with liberty to surrender before the Investigating Officer on the stipulated date.

The record clearly indicates that the applicant instead of complying with the solemn statement made before this Court, has indulged

into flouting the same and as per record is absconding since 3.5.2017. As noted earlier, the Investigating Agency has made several attempts to arrest the applicant, however, did not succeed as the applicant was not traceable at his known addresses. On this ground alone the applicant is disentitled for claiming the discretionary relief of pre-arrest bail.

6] This leads me to deal with the submissions made with respect to the hand-writing expert's report dated 5th June 2017. It is to be noted here that from 3.5.2017 the applicant is absconding and/or hiding from the clutches of law and it clearly appears that without disclosing the said fact to the concerned hand-writing expert, the applicant has procured the report only with a view to creat his probable defence in the criminal trial, if the police submits its final report under section 173(2) of Cr. P.C. It is needless to mention that, the procurement of the hand-writing expert's report by the applicant is a feeble attempt made by him to further escape from the clutches of law by profoundly contending that the signatures on the alleged documents are not tampered or forged by him.

7] At this stage a safe, reliance can be placed on a decision of this Court in the case of ***Kamlesh s/o Dhirajlal Gandhi Vs. State of Maharashtra [2007(2) Mh.L.J.]***, wherein after taking into consideration

relevant decisions of the Supreme Court, this Court in para-20 has held as under:

“20 As already discussed hereinabove, it is well settled that insofar as the application under section 439 of the Code is concerned, successive application on new fact situations or change in law could be entertained. As already discussed above, the provisions of sections 438 and 439 of the Code are almost analogous. The Constitution Bench of the Supreme Court in *Gurubaksh Singh's* case has held that since denial of bail amounts to deprivation of personal liberty the Court should lean against imposition of unnecessary restrictions on the scope of section 438/439 of the Code especially when not imposed by the legislature. I am, therefore, inclined to hold that successive applications for anticipatory bail, after rejection of earlier application, would be tenable in law. However, as held in *Kalyan Chandra Sarkar's* case the said application is tenable only when there is a change in the facts situation or law which requires earlier view being interfered with or where the earlier view has become obsolete. In that view of the matter, the present applications are tenable in law.”

8] In view of the above, as far as the submission of the applicant that, there is a change in circumstance after receipt of the said hand-writing expert's report is concerned, the same is noted and recorded only for its rejection at its threshold. In my considered view, there is no change at all, least to say any substantial change in the circumstances after rejection of earlier application on 25.4.2017. Therefore, the present application does

not deserve to be entertained and is liable to be rejected on this count also.

9] As far as the reliance placed by the applicant on the aforestated decisions of the various High Courts is concerned, in the first case namely *Atul Laxmishankar Bhatt Vs. State of Gujarat* (supra) in para-3 of the said decision, the Gujarat High Court had expressly granted liberty to the concerned applicant to file a fresh application after the opinion of the of hand-writing expert's report was available regarding specimen signatures of the applicant. However, in the case in hand, no such liberty was granted to the applicant and as stated earlier, in fact when this Court was inclined to reject the application, the applicant sought liberty to surrender before the Investigating Officer on stipulated date. Apart from the said fact, in the present case, the allegation against the applicant is very serious in nature i.e. the applicant has tampered and forged the name of the recipient and the date of issuance of stamp paper.

As far as the decision in the case of *Mohammad Yakub V. State of Karnataka*, of the Karnataka High Court is concerned, the said application was under Section 439 of Cr. P.C. for regular bail after filing of the chargesheet by the police and not a second application for pre-arrest bail and therefore the said decision is of no avail to the applicant.

As far as the decision of the Bombay High Court in the case of Mathloob Abdul Gafoor Qureshi & Anr. Vs. The State of Maharashtra (supra) is concerned, the same deals with the first application for pre-arrest bail and the facts involved in the said case are totally different than that in the present case.

It is to be noted here that, all the aforestated decisions are rendered in context of the facts involved in the said cases and do not deal with any specific principle of law and therefore according to me the reliance placed by the learned Counsel for the applicant on those decisions is totally misplaced.

10] Irrespective of the aforestated grounds for rejection of the present second pre-arrest bail application, at the insistence of Shri Chavan, the learned Senior Counsel I have once again scrutinised the material available on record against the applicant and it clearly indicates that, the first information report lodged by the Assistant Sub-Registrar of Assurances-II, Kalyan-II. It is specifically and categorically alleged in the said first information report that the applicant being partner of M/s Mahadev Nirman tampered and forged the stamp papers which were issued by Smt. Kanchan Bongale (stamp vendor) of Bandra, Mumbai dated

21.1.2011 in the name of Saburi Construction and the date is forged to 25.5.2008. That the name of the recipient is tampered with/forged to 'M/s Mahadev Nirman'. That the said act is done with a view to show lesser price of the suit land and to avoid stamp duty and to defraud the Government.

The record of investigation further reveals that the stamp papers bearing No.37086-235 were issued in the name of Saburi Construction by the same stamp vendor (Smt. Kanchan Bhongale). That out of the said stamp papers a stamp paper bearing No.37182 has been used for executing the development agreement between Sudama Associates Pvt. Ltd. and the applicant being representative of M/s Mahadev Nirman. It is the specific case of the prosecution that, the applicant has tampered and/or forged the name of recipient and the date of issuance of the said stamp paper. The Investigating Officer during the course of investigation has recorded the statement of the stamp vendor Smt. Kanchan Bongale and it clearly reveals that the said stamp paper bearing No.37162 was issued in favour of M/s Saburi Construction with a particular date. The police have also seized the register from the stamp vendor which further indicates that the said stamp paper was in fact issued in the name of Saburi Construction

on 21.1.2011 and not in the name of applicant's firm.

The record of investigation also reveals that the alleged partnership deed dated 5.4.2008 executed between the applicant and his wife forming partnership firm namely M/s Mahadev Nirman is on stamp paper bearing No.21433 dated 4.4.2008, which was originally issued in the name of "R.B. & Co on 1.2.2011. The record of investigation clearly indicates that the said stamp paper has also been forged and/or tampered with by the applicant and the name of the recipient M/s Mahadev Nirman with a date of 4.4.2008 has been changed thereon.

The investigation carried out till today clearly indicates that it is the applicant, who is the main perpetrator of the crime and at his instance the said stamp papers were tampered with or forged. Indubitably the allegation against the applicant of tampering with or forging the stamp papers is of very serious nature and requires thorough investigation at the hands of the police with a view to unearth the entire truth behind the crime and for the same the custodial interrogation of the applicant is necessary.

11] In view of the above, according to me, the present application is devoid of any merits and is accordingly rejected.

(A.S. GADKARI, J.)