

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 898 OF 2017

Satyanarayan S/o Ramudatta Tiwari

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Anand Mishra i/b Mr. A. M. Saraogi Advocate for Applicant

Ms. P. P. Shinde APP for the State.

Mr. K. R. Sanap, API, Goregaon Police Station.

CORAM: SMT. SADHANA S.JADHAV, J.

DATED : 22nd JUNE, 2017.

P.C.

1) Heard the learned counsel for the applicant. This is a subsequent application filed by the applicant under section 438 of the Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 11 of 2017 registered at Goregaon Police Station for offence punishable under sections 406, 420, 109 r/w 34 of the Indian Penal Code. Applicant herein had filed Criminal Application No. 219 of 2017. The said application was argued on 10/02/2017. The Court had perused the papers of investigation and was therefore, not inclined to grant discretionary relief in the nature of

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anticipatory bail under section 438 of the Code of Criminal Procedure, 1973.

This Court on 10/02/2017 has passed the following order:

“After arguing at length, the learned Counsel for the applicant upon instructions seeks liberty to withdraw the application. Liberty as prayed for is granted in the interest of justice. The application stands dismissed as withdrawn and disposed of accordingly”.

2) Applicant had then approached the learned Sessions Court under section 438 of the Code of Criminal Procedure, 1973 by filing Criminal Application No. 417 of 2017. The learned Sessions Judge had heard the matter on merits. The learned Sessions Judge had also perused the order dated 10/02/2017. The learned Sessions Judge was also apprised of the fact that co-accused are enlarged on bail. The learned Judge has been pleased to observe that accused/applicant had not placed on record any bail order which would indicate that co-accused were enlarged on bail.

3) The learned counsel for the applicant has vehemently argued that on 09/01/2017, the statement of co-accused Philip was recorded, pursuant to the

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notice under section 41 (2) of the Code of Criminal Procedure, 1973. Papers of investigation also indicate that the applicant was the mastermind of the act of cheating and that he had abetted and instigated the co-accused to indulge into the offence. It was seen that the applicant had disclosed to the co-accused that they should show imitation jewellery to the jewellers, pretend that they are genuine gold articles and then had pledge those articles for huge amount. In fact, the imitation jewellery were of brass, they look like gold. The learned Sessions Judge has considered the papers of investigation and had also observed that present applicant has played vital role in cheating the complainant. Moreover, the learned APP submits that papers of investigation would further indicate that the applicant has succeeded in cheating many such jewellers.

4) It is further pertinent to note that the application seeking pre-arrest bail was rejected on 02/02/2017 and till today, applicant is at large. Upon query made to the learned APP as to why the report under section 173 (2) of the Code of Criminal Procedure, 1973 is not filed, officer present in the Court has submitted that as on today, there is no recovery and therefore, charge-sheet is

not filed.

5) The learned counsel for the applicant, upon instructions submits that the applicant is willing and ready to deposit the amount of Rs. 3,37,900/- as that was the value of the jewellery which was mortgaged, however, this is a subsequent application. Earlier application was rejected on merits and it would not be appropriate to exercise the discretionary relief in favour of the applicant.

6) In view of this, application stands rejected.

7) The learned counsel for the applicant submits that applicant would surrender before the concerned Magistrate on or before 05/07/2017.

8) The learned Magistrate shall consider the application for enlargement on bail on its own merits, without being influenced by the observations made herein above as the observations are restricted to an application under section 438 of the Code of Criminal Procedure, 1973. In view of this, applicant stands

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protected till 5.00 p.m. of 05/07/2017. In the eventuality that applicant fails to appear before the learned Magistrate on or before 05/07/2017, investigating agency shall arrest the accused and proceed in accordance with law.

(SMT. SADHANA S. JADHAV, J.)