

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.637 OF 2017

1) Sangeeta Jagdish More ...Applicants
2) Shivajirao Nasappa Sitale
Versus
The State of Maharashtra ...Respondent

Mr. V.V.Ugle for the applicants.
Ms.P.P.Shinde, APP for the State.

CORAM: A.M. BADAR, J.
DATED: 29th NOVEMBER 2017

PC:-

1. The applicants are accused No.1 and accused No.4 in Crime No. 208 of 2015 registered with police Station CBD, Navi Mumbai, for the offences punishable under Sections 406, 418, 420, 467 r/w 34 of the Indian Penal Code at the instance of Hoshang Karai. By this application they are challenging the order dated 10th January 2017 passed by the learned Additional Sessions Judge, Thane in Criminal Miscellaneous Application No.186 of 2016 thereby cancelling the anticipatory bail granted to them in the subject crime.

2. Heard the learned advocate appearing for the applicants/accused Nos.1 and 4. He argued that after the order of interim relief passed in this application on 30th June 2017, applicants herein are duly adhering to the conditions imposed by the Additional Sessions Judge, Thane, while granting anticipatory bail to them. The learned advocate drew my attention to the entries in the diary kept by the applicants and endorsed by the station diary in charge of the police station to demonstrate that the applicants are adhering to the conditions imposed by the learned Additional Sessions Judge.

3. The learned APP has not disputed the fact that subsequent to the cancellation of anticipatory bail and after getting protection from this Court, the applicants are complying the terms imposed by the Additional Sessions Judge while granting anticipatory bail granting to them.

4. I have considered the rival submissions and also perused the material on record.

5. The FIR in question is lodged by Hoshang Karai on 12.12.2015 with an averment that as a Branch Manager of Katach Shipping Agency he had provided financial assistance of more than Rs.82 lakh to the accused persons including the present applicants but except Rs. 37.73 lakh, they have not refunded rest of the amount to him. Considering the nature of allegations against the applicants, as well as the other accused persons, by an order dated 19.12.2015, the learned Additional Sessions Judge allowed anticipatory bail application moved by the present applicants and the co-accused. While granting pre-arrest bail to the applicants, the learned Additional Sessions Judge, directed all accused persons to attend the concern police station on every Sunday from 10 a.m. to 12 p.m. so also to attend the police station whenever called by the Investigating Officer. It was further directed that the accused shall not leave India without permission of the Court.

6. With an averment that the present applicant/accused Nos.1 and 4 have not complied the terms of the order dated 19.12.2015 the State had moved an application for cancellation of their anticipatory bail granted by the impugned order dated 10.1.2017. The learned Sessions Judge, was pleased to allow the said Criminal Miscellaneous Application bearing No.186 of 2016 and the anticipatory bail granted to both the applicants as well as the co-accused came to be cancelled.

7. It is seen that allegations against the accused persons is to the effect that the entire amount advanced as a financial assistance by the first informant is not refunded. After cancellation of the anticipatory bail, this Court vide order dated 30th June 2017, had stayed the said order and that stay is continued till date. During all this period, the applicants herein are adhering to the terms and conditions imposed on them by the learned Additional Sessions Judge while granting pre-arrest bail to them. It is seen that the impugned order

was passed on the basis of the averments made by the State and as present applicants have chosen not to file their say and to contest the application. The learned Additional Sessions Judge, while cancelling the pre arrest bail has observed that the present applicants have not supplied documents to the investigating officer and had not attended the police station on every Sunday. It is further held that the applicant Sangeeta had left without permission of the Court. It is well settled that for cancellation of pre-arrest bail, very cogent and overwhelming request are required and cancellation cannot be done in a mechanically manner. As all applicants are reportedly complied with the order granting pre-arrest bail to them and as the impugned order is passed mechanically without recording cogent reasons, overwhelming consideration warranting cancellation of pre-arrest bail the same cannot be sustained. In the result, the following order.

ORDER

- i) The application is allowed.

ii) The impugned order dated 10.1.2017 passed by the learned Additional Sessions Judge, Thane in Misc. Criminal Application No.186 of 2016 is hereby quashed and set aside.

Needless to mention that the order granting pre- arrest bail to the applicants is restored.

iii) The application is disposed of accordingly.

(A.M. BADAR, J)