

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1127 OF 2017**

1. Irfan Munaf Divte	.. Applicants
2. Imran Munaf Divte	
vs	
State of Maharashtra	.. Respondent

Ms.Mallika Ingale for Applicants
Mr.Arfan Sait APP for State

CORAM: PRAKASH D.NAIK, J

DATE: 01 July 2017

P.C.

1. This is an application for anticipatory bail in connection with C.R.No.315 of 2016 registered with Shivaji Nagar Police Station for offence punishable under sections 395,397,506 (2) 504, 427 read with section 34 of IPC and section 25 read with section 4 of the Indian Arms Act.

2. The learned APP at the outset pointed out that Anticipatory Bail Application No.156 of 2017 in respect of Applicant no.2 has been rejected by this Court vide an order dated 4.4.2017. He submitted that the said order has been suppressed by the Applicant no.2. It is also pointed out that after rejection of aforesaid application by this Court on 4.4.2017, the Applicant no.2 had jointly

preferred an application for anticipatory bail before the Sessions Court along with applicant no.1 viz.A.B.A.No.872 of 2017 by suppressing the order dated 4.4.2017 which was rejected on 23.6.2017. As stated above, again the said order is suppressed in this Application.

3. Learned Advocate for the Applicants submits that she was not aware of the said order and instructions in that regard were not given to her by the Applicant no.2. Further, on instructions, she submitted that she does not press the Application filed on behalf of Applicant no.2.

4. The Applicant no.1 had preferred an Application for anticipatory bail before Sessions Court viz A.B.A.No.1813 of 2016 which was rejected on 19.10.2016. While rejecting it was observed that it could be well gathered that the present Applicant has played role in the said incident and custodial interrogation is necessary.

5. The Applicant no.1 then preferred an Application for anticipatory bail before this Court i.e.Anticipatory Bail Application

No.2097 of 2016. The said Application was rejected on 6.12.2016. While rejecting the said Application, it was observed that the Applicant No.1 is named as a group leader who has assaulted the Complainant with a specific role. Injury certificate confirms participation of the Applicant no.1 in the crime and no case is made out for pre-arrest bail. This Court has also taken into consideration the submissions advanced at the instance of the Applicant no.1 that the investigation is over and that there is counter FIR resulting in registration of Crime No.316 of 2016 against the group of Complainant in Crime No.315 of 2016 and that the role attributed to the Applicant is not serious. It was also argued that custodial interrogation is not warranted. Considering the said submissions, Application of applicant no.1 was rejected by this Court on 6.12.2016.

6. The Applicant No.1 preferred another Application before the Sessions Court i.e. Anticipatory Bail Application No.872 of 2017. In the said application, it was stated that the charge sheet has been filed against a co-accused and the charge sheet does not indicate any cogent material against the Applicant. The said Application was

rejected by the Sessions Court on 23.6.2017. While rejecting the said application it was observed by Sessions Court that the applicant has evaded investigation and cannot claim benefit of charge sheet filed against arrested accused.

7. The order dated 4.4.2017 passed by this Court in Anticipatory Bail Application No.156 of 2017 which was preferred by the Applicant no.2 was rejected with detail observation on merits. In any case, the Applicant no.2 is not pressing his Application.

8. The learned Advocate submitted that the Application of Applicant no.1 was rejected by an order dated 6.12.2016. However, the charge sheet has been filed against a co-accused and from the said charge sheet she can point out that there is no evidence against the Applicant no.1. She submitted that filing of the charge sheet against the co-accused is change in circumstances and the present application may be entertained. She submitted that from the charge sheet she can point out that the Applicant no.1 is entitled for Anticipatory bail. She also relied upon an order passed by this Court in Anticipatory Bail Application No.1953 of 2016. She submitted that

in that case, the second Application was entertained after filing of the charge sheet. The said Application was allowed vide order dated 20.12.2016.

9. I have perused the earlier order passed by this Court. The Application of the Applicant no.1 was rejected on 6.12.2016 on merits. This Court had assigned reasons for rejecting the Application. Since then, the Applicant no.1 is absconding. After considering the Application on merits merely on the ground that the charge has been filed against a co-accused and the Applicant No.1 intends to rely upon the documents in the said charge sheet and make submissions on merits cannot be said to be a ground for entertaining the second Application. Although the Application was rejected on 6.12.2016, the Applicant no.1 was not available. This Court while rejecting the Ist Application has clearly stated that on perusal of the investigation papers, it appears that the Applicant no.1 is named a group leader and he has assaulted the complainant with a specific role. It is also observed that the Injury certificate confirms the participation of the Applicant no.1 in the crime and therefore, no case is made out for pre-arrest bail.

10. Learned APP submitted that the conduct of both the Applicants has to be deprecated. He submitted that this Application is not maintainable. The Applicant no.2 had suppressed the order dated 4.4.2017 in this Application as well as before Sessions Court, although the Application was rejected on merits by detailed order. He submitted that although the Applicant no.2 is not pressing this Application, there was joint effort by Applicants to evade arrest. It is noted that this is the fourth Application for anticipatory bail by Applicant no.1. Two Applications were rejected by Sessions Court and one by this Court. The Applicant no.1 did not challenge the order dated 6.12.2016 before the Supreme Court. The FIR was registered on 7.8.2016. The Applicant no.1 has evaded arrest. He was not available for investigation since last 11 months. The charge sheet is being filed against co-accused and their case has been committed to Sessions Court. The Applicant no.1 is absconding. On the ground of charge sheet being filed against arrested accused the Applicant cannot be permitted to seek relief under section 438 of the Code of Criminal Procedure when earlier Application has been rejected on merits. Considering the observations made by this Court in order dated 6.12.2016 the powers under section 438 of the Code

of Criminal Procedure cannot be used repeatedly by person who is absconding since last 11 months. It is in these circumstances, this Application cannot be entertained. The order relied upon by the learned Advocate does not indicate that it was second Application preferred belatedly by the Applicant therein. Assuming that it was second Application for reasons stated, the present Application deserves to be rejected. In any case, I am not holding that there is legal bar in entertaining second Application. In the facts and circumstances of the present case stated above, I am not inclined to entertain this Application and the same is liable to be rejected.

11. Hence, the following order :

O R D E R

{i} Application on behalf of Applicant no.2 is not pressed and therefore the Applicant no.2 is allowed to withdraw the Application.

{ii} The Application preferred by the Applicant no.1 cannot be entertained in view of the earlier rejection vide order dated 6.12.2016 and hence the Application is rejected.

Application stands disposed of.

{PRAKASH D.NAIK,J}

