

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

ANTICIPATORY BAIL APPLICATION NO. 1349 OF 2017

Bharti Jagdish Khanvilkar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Aniket Vagal for the Applicant.

Mr. Ajay Patil, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 01st NOVEMBER, 2017

P.C.:

. This is second application for pre-arrest bail. Earlier Anticipatory Bail Application No. 1574 of 2016 was dismissed as withdrawn by an order dated 08.09.2016. 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 present application unconditionally.

2. Leave granted.

3. Application is dismissed as withdrawn.”

2. It is the settled position of law that mere change in Counsel/Advocate would not constitute any substantial change in the circumstances. A learned Single Judge of this Court, after taking into consideration various authorities of Supreme Court and this Court in the Case **“Kamlesh Dhirajlal Gandhi V/s. State**

of Maharashtra” ALLMR(CRI) 2007 0 1572: MHLJ 2007 2 851: MHLJ(CRI)

2007 1 324 has held as under:

“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 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.”

3. After perusing the record, it clearly appears that, there is no change, least to say any substantial change in the facts and circumstances of the present case.
4. The present application being misconceived is accordingly rejected.

(A.S.GADKARI, J.)