

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1741 OF 2017

Pradeep S. Patil vs. State of Maharashtra

WITH

ANTICIPATORY BAIL APPLICATION NO.1742 OF 2017

Rahul S.Patil vs. State of Maharashtra

Mr. Sandeep Karnik for the Applicants.

Mr. Ajay Patil, APP. for the State in ABA No.1741/2017.

Mrs. A.A.Takalkar, APP. in ABA NO.1742/2017.

CORAM : A.S.GADKARI, J.

DATE : 5th October, 2017

P.C.

1. These are successive applications for pre arrest bail by the applicants. The earlier anticipatory bail applications No.1425/2017 and 1426/2017 were disposed off as withdrawn by an order dated 22.8.2017 passed by the predecessor in title of this Court (Shri.T.V.Nalawade,J.).

The order dated 22.8.2017 reads as under:-

“When this Court expressed that it is not inclined to grant the relief, learned counsel for the applicant on instructions, submitted that he wants to withdraw the proceedings.

Disposed of as withdrawn.”

2. A learned Single Judge of this Court in the case of Kamlesh D. Gandhi vs. State of Maharashtra and another in Criminal Application Nos. 3347 to 3349 and 3458 of 2006 while dealing with the successive application under Section 438 of the Cr.P.C. 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 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 Chndra 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 absolute. In that view of the matter, the present applications are tenable in law”.

3. The pleadings in the present applications are nothing less than of a review application which is not tenable in law. After perusing the record annexed to the application, this Court is of the considered view that there is no change at all least to say any substantive change in the facts and circumstances of the present case or law which requires earlier view being interfered with or where the earlier view has become obsolete.

4. The present applications are misconceived and accordingly rejected.

(A.S. GADKARI, J.)