

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPLN) NO.42 OF 2017

Lalita Umesh Rathod, Sonal Colony, Amravati

-vs-

The State of Maharashtra, Thr. PSO, PS Gadgenagar, Amravati and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. N. Ali, Advocate for applicant.

Ms Shamsi Haider, Addl. PP for non-applicant No.1/State.

Non-applicant Nos.2 to 8 served.

CORAM : A.S.CHANDURKAR, J.

DATE : December 08, 2017

Heard.

This application filed under Section 439(2) of the Code of Criminal Procedure, 1973 by the informant in which a prayer is made that the order granting pre-arrest bail to the non-applicant Nos.2 to 8 be cancelled.

2. The applicant on 02/06/2017 lodged report in which it was stated that on 01/06/2017 at about 3 pm the non-applicant No.2 who is the husband of the applicant, along with other non-applicants who are in-laws and other relatives had come to the residence of the applicant and had forcibly entered the same. The applicant and her children were kept locked in the bed room after which various household items were forcibly removed from the house. Thereafter the applicant and

her children were brought outside and were threatened with dire consequences. All the household items were kept in a four wheeler for being taken away. When the applicant refused to leave the premises, the non-applicant No.2 brought a can and poured some liquid on the applicant with a view to set her on fire. On this basis the aforesaid report came to be lodged initially under Sections 342, 498A, 506 and Section 34 of the Indian Penal Code. Offence under Section 395 of the Penal Code was added subsequently. The non-applicants moved the Sessions Court for grant of anticipatory bail and by order dated 07/07/2017 the same was granted by the Sessions Court.

3. The learned counsel for the applicant submitted that the learned Judge of the Sessions Court proceeded to grant pre-arrest bail on irrelevant considerations and by ignoring the First Information Report. It is submitted that said non-applicants were alleged to have committed offence that was also punishable under Section 395 of the Penal Code. However only by considering the offence punishable under Section 498A of the Penal Code the protection came to be granted. It is then submitted that the conditions imposed by the Sessions Court as a condition for grant of protection have not been followed by the non-applicant Nos.2 to 8. On these counts it was submitted that the interim protection deserves to be withdrawn.

4. Reply has been filed on behalf of the non-applicant No.1. It is stated therein that offence under Section 395 of the Penal Code came to be added on 19/06/2017 which is prior to the order passed by the Sessions Court. This fact though brought to the notice of the Sessions Court was however disregarded. It is further stated that the accused persons have breached the conditions imposed by the Sessions Court as regards their attendance.

5. Notice was issued to non-applicant Nos.2 to 8 on 18/08/2017. Despite being served with said notice the said non-applicants did not appear on 03/11/2017. Hence for granting one opportunity the hearing of the application was deferred to 15/11/2017. Though the application was listed on four previous occasions, the non-applicant Nos.2 to 8 have not chosen to contest the same.

6. The offence in question is registered on 02/06/2017. At that point of time, the offence was registered under Sections 342, 498A, 506 and 34 of the Penal Code. On 19/06/2017 offence under Section 395 of the Penal Code came to be added. This fact was brought to the notice of the Sessions Court by the Prosecution when it filed its say. Same is dated 28/06/2017. The Sessions Court decided the application on 07/07/2017 and after taking into consideration only the offence

punishable under Section 498A of the Penal Code, confirmed the ad-interim protection granted earlier. It is thus clear that the order dated 07/07/2017 suffers from non-consideration of relevant material that was placed on record namely that the non-applicants were charged with offence punishable under Section 395 of the Penal Code. As held in ***Kanwar Singh Meena vs. State of Rajasthan and anr. (2012) 12 SCC 180***, if the Court granting bail ignores relevant material indicating prima facie involvement or takes into account irrelevant material having no relevance, the Court would be justified in cancelling the bail. Failure to consider applicability of said offence has vitiated the impugned order.

7. By the order dated 07/07/2017 passed by the Sessions Court the non-applicant Nos.2 to 8 were directed to attend the concerned police station on every Tuesday between 11 am and 2 pm till filing of the charge-sheet. In the reply filed by the Investigating Officer, it has been specifically stated that none of the accused attended the police station on 25/06/2017, 02/07/2017, 09/07/2017 and 18/07/2017. On one Tuesday thereafter, some of the accused attended the police station. After 19/09/2017 it is submitted that non-applicant Nos.2 to 8 have again not co-operated with the investigation. It is therefore clear that the conditions imposed while enlarging the non-applicant Nos.2 to 8 on

bail have been breached.

8. Hence on account of grant of protection on the basis of consideration of irrelevant material and violation of the conditions imposed while granting protection, the pre-arrest bail granted to non-applicant Nos.2 to 8 deserves to be cancelled. Similarly, perusal of the statement of informant prima facie indicates the involvement of all the non-applicants in the offence. In view thereof the following order is passed :

The order dated 07/07/2017 passed in Misc. Criminal Application No.468/2017 passed by the learned Additional Sessions Judge-6 is set aside. The pre-arrest bail granted to non-applicant Nos.2 to 8 stands cancelled. The Investigating Officer to take appropriate steps in the matter.

The application is allowed and disposed of.

JUDGE