

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 785 OF 2017

Mr. Rajbeer Singh Bhadoria ...Applicant.

vs.

The State of Maharashtra ...Respondent.

Mr. Anand Mishra i/by A.M.Sarogi for the Applicant.

Mr. Ameet Palkar, APP. for the State.

Mr. Shashikant P. Chaudhari for Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 12th July, 2018

P.C.

1. This is another example as to how the guidelines issued by the Hon'ble Supreme Court of India and the law laid down by it under Article 141 of Constitution of India is being breached or flouted by all the concerned.

2. The applicant was granted interim relief by this Court on 2.5.2017. The matter was thereafter adjourned and the respondent No.2 was provided with legal aid by an Order dated 9.2.2018 by this Court to espouse her cause. The matter was thereafter scheduled for hearing from time to time and adjourned at the request of the learned counsel for the applicant. The present application was taken up for

hearing on 10.7.2018 when it was informed to this Court by the learned counsel for the applicant that, during the pendency of the present application the police have completed investigation and submitted charge sheet. That, the applicant has been released on regular bail by the learned Judicial Magistrate First Class, Vashi, Navi Mumbai by its Order dated 28.2.2018. The learned counsel for the applicant was therefore directed to produce the said order on record today and he accordingly has produced the said order before this Court. Thus, it is apparent that during the pendency of the present application the Investigating officer has submitted charge sheet and directed the applicant to remain present before the Judicial Magistrate, First Class Vashi. The concerned Magistrate also without verifying the correct position of law and the guidelines issued by the Hon'ble Supreme Court of India to all the concerned has proceeded to grant bail to the applicant.

3. The Hon'ble Supreme Court in the case of Rukmani

Mahato vs. State of Jharkhand reported in (2017) 15 SCC 574 after noting disturbing practice which is being adopted by all the concerned in our country in Para 9 and 10 has held as under:-

“9. When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned Trial Court and seek regular bail. The predicament of the Subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the accused concerned. Once a regular bail is granted by a subordinate court on the strength of the interim/pre-arrest bail granted by the superior

court, even if the superior court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior court meaningless.

10. If this is a practice that is prevailing in some of the subordinate courts in the country and we have had notice of several such cases, time has come to put the learned subordinate courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior court must be discouraged. We, therefore, direct that a copy of this order be forwarded to the Director of all judicial academies in the country to be brought to the notice of all Judicial officers exercising criminal jurisdiction in their respective

States”.

4. In view thereof the concerned Investigating Officer is hereby directed to submit his explanation to this Court as to why he should not be proceeded with as per the prevailing law for flouting the directions issued by the Supreme Court of India.

5. The Registrar (Judicial-1) is directed to call for the explanation from the concerned Judicial Magistrate First Class, Vashi, Navi Mumbai for not following the guidelines issued by the Hon'ble Supreme Court of India in the case of Rukmani Mahato (supra) within two weeks from today.

5. In view of the above, the interim relief granted by an Order dated 2.5.2017 stands vacated forthwith. The order passed by the Judicial Magistrate First Class, Vashi, Navi Mumbai dated 28.2.2018 passed in RCC No.258/2018 is hereby quashed and set aside. The applicant is directed to surrender before the Judicial Magistrate First Class, Vashi, Navi Mumbai within a period of two weeks from today and to file an application for regular bail in that behalf. The

learned Judicial Magistrate First Class Vashi is hereby directed to hear the application of bail on its own merits without being influenced by the present order or the observations made in Order dated 2.5.2017 passed by this Court.

6. The learned District Judge, Thane is hereby directed to transfer the proceedings of RCC No.258/2018 from the file of the concerned Judicial Magistrate First Class, Vashi who has passed the order dated 28.2.2018 to any other Judicial Magistrate First Class forthwith and submit a report in that behalf to this Court within two weeks from today.

7. Application is accordingly disposed off.

All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

8. The Registrar Judicial (I) is directed to communicate this order to all the concerned expeditiously

9. For compliance of the aforesaid directions, S.O. to 27.7.2018.

(A.S.GADKARI, J.)

(The original order dated 12.7.2018 is corrected as per order dated 23.7.2018.)