

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 999 OF 2018

Ravindra Dwarkanath Bakre ..Applicant
vs.
The State of Maharashtra ..Respondent.

Mr. Subhash Jha with Ms. Sanjana Pardeshi, Aashish Jha with
Mr. Harekrishna Mishra i/by Law Global for the Applicant.
Mrs. Rutuja Ambekar, APP. for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 11th December, 2018

P.C.

1. This is a consecutive application under Section 438 of the
Criminal Procedure Code for pre-arrest bail in CR No.
125/2017 dated 7.5.2017 registered with Satpur Police Station,
District Nashik under Section 408 of the Indian Penal Code.
2. The earlier application for pre-arrest bail preferred by the
applicant bearing ABA No.1667/2017 was rejected by this
Court, by a speaking Order dated 29.9.2017. The said Order
dated 29.9.2017 was impugned before the Hon'ble Supreme
Court by way Special Leave to Appeal (Cri.) No8107/2017. The
Hon'ble Supreme Court by its Order dated 2.11.2017 was
pleased to dismiss the said Special Leave Petition. The applicant

thereafter filed the present application on 12.5.2018.

The present application came up for hearing before this Court on 13.7.2018 and in view of the fact that, by an Order dated 2.11.2017 the Supreme Court was pleased to dismiss the Special Leave Petition, this Court while expressing disagreement with the submissions advanced by the learned counsel for the applicant had adjourned the matter, as the learned counsel for the applicant had sought time to seek clarification from the Hon'ble Supreme Court with respect of Order dated 2.11.2017 passed by it. The Hon'ble Supreme Court by its Order dated 24.09.2018 passed in MA No.2246/2018 in SLP (Cri.) No.8107/2017 while disposing of the said petition, has observed that, the application for bail or application for anticipatory bail has to be considered and, if a case is made out, the relief can certainly be granted.

In this background the present application is taken up for hearing today.

3. Heard Mr. Jha the learned counsel for the applicant and the learned A.P.P. Perused the record of investigation.
4. The record indicates that, though this Court rejected the application for pre-arrest bail of the applicant on 29.9.2017 and

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the Supreme Court did not interfere with the said Order by its order dated 2.11.2017, the Investigating Officer till date has not taken any steps to arrest the applicant who is stated to be a public servant and is presently under suspension from the Government job. It appears that, the Investigating officer is negligent in investigating the crime.

5. Be that as it may. This Court in the case of *Kamlesh Dhirajlal Gandhi vs. State of Maharashtra and anr.* reported in *2005 0 Cr.L.J. 2086: 2007 Mh.L.J. (2) 851: All MR (Cri.) 2007 0 1572*, in Para 20 has held as under:

“20. As already discussed herein above, 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 this 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

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application 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 absolute. In that view of the matter, the present applications are tenable in law”.

6. In view of the ratio laid down in the case of Kamlesh Gandhi (Supra) the material available on record is scrutinized by this Court to assess whether there is any substantial change in fact situation than what was prevailing on 29.9.2017.

7. It is to be noted here that, the principal accused in the present crime namely Mr. Indrapal Singh Sahani has been granted bail by this Court by an Order dated 7.11.2017 by imposing certain conditions. One of the condition was that, before his release from Jail, the said co-accused shall deposit the alleged amount involved in the crime of Rs.1,46,00,000/-in the registry of this Court before his actual release from Jail. That, the said co-accused has deposited the said amount in the registry of this Court within stipulated period mentioned in the said Order dated 7.11.2017.

7-aba-999-18.doc

8. The prosecution case in brief is that, with a view to get benefit of the said amount from the competent authority under MIDC Act, the principal accused Indrapal Singh Sahni in connivance with the present applicant who is an employee of MIDC has caused disappearance of 192 pages from the file of plot of land bearing Nos. E1 to E4 lying and situate at Satpur Industrial Estate, MIDC, Nashik of which the principal accused Inderpal Singh Sahni is the lessee. The record indicates that, an envelope containing 122 pages of the said alleged misplaced papers were found on a sofa situated within the office of the said MIDC, Satpur Industrial Estate, Nashik, just prior to lodgment of the present crime and about 59 pages were still reported to be missing. The record further indicates that a crime bearing CR No.322/2017 has been registered by the prosecution on an allegation that principal accused Mr.Indrapal Singh Sahni caused blast/fire in his godown which was situated in the precincts of the company namely M/s. Percision Industries for causing destruction of the said balance papers which were caused to be disappeared from the office of the MIDC in connivance with the applicant. That, the said blast/fire was caused at the behest of the principal accused Indrapal Singh

7-aba-999-18.doc

Sahni and as per the prosecution and as noted earlier it was caused to destruct the evidence of the present crime, including the balance 59 pages. Thus, it is clear that as per the prosecution case itself the balance documents which were supposed to be recovered at the instance of the applicant have been destroyed by the said Mr. Sahni by causing blast/fire in his godown situated at MIDC, Satpur, Nashik and for which a separate crime bearing CR No.322/2017 has been lodged on 19.9.2017.

9. The prosecution is seeking custody of the applicant mainly for the purpose of recovery of the said 59 papers from the file of Plat No.E1 to E4 situated at Satpur Industrial Estate, MIDC, Nashik. In view of the deposit of the aforesaid amount of Rs.1,46,00,000/- by the principal accused Indrapal Singh Sahni thereby making good the alleged loss suffered by MIDC thereby showing his bonafide and lodgment of the subsequent crime bearing No.322/2017, in considered opinion of this Court, there is a substantial change in the facts situation of the present case and this Court is of the view that, at this juncture the custodial interrogation of the applicant for further investigation of the present crime is not necessary and the applicant can be

protected by pre-arrest bail.

10. Hence, the following order.

a) In the event of arrest in CR No. CR No. 125/2017 dated 7.5.2017 registered with Satpur Police Station, District Nashik, the applicant shall be released on bail on his furnishing PR bond of Rs.25,000/-with one or two solvent local sureties in the like amount.

b) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)