

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

CRIMINAL APPLICATION NO. 791 OF 2018

Riyaz Ramzan Khatri

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr. N.R. Sharma for the applicant.

Mr. Y.M. Nakhwa, APP for the Respondent-State.

Mr. Suresh B. Kawale, PSI, Khar Police Station.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 18th JULY, 2018.

P.C.

1. The applicant was granted anticipatory bail by Sessions Court, Mumbai in connection with Crime No. 95 of 2017 registered with Khar Police Station for offences punishable under Section 452, 323, 354, 427, 143, 144, 147, 149, 504, 506 and 120(B) of the Indian Penal Code.

2. Learned Sessions Court had allowed the said application for anticipatory bail by order dated 18th March, 2017 with certain conditions and one of the condition is that the applicant was directed to attend Khar Police station on every Tuesday and Thursday until further orders. The applicant was directed to be

release on bail on executing PR Bond and the surety in the sum of Rs.15,000/-.

3. On account of non-compliance of the condition of reporting the Police Station, Khar, the prosecution filed an application bearing No. 243 of 2017 before the Sessions Court for cancellation of anticipatory bail. The learned Sessions Judge by order dated 27th March, 2018 allowed the said application and cancelled bail granted to him.

3. Learned counsel for the applicant submitted that in pursuant to the order passed by the Sessions Court granting anticipatory bail, the applicant had attended police station on 6th April 2018, 17th April, 2018 and 20th April, 2018. It is further submitted that the applicant had not attended police station on account of certain reasons. It is submitted that the applicant was suffering from Chronic Lumbar Pain and was advised to take rest by the doctor from 15th March, 2017 to 30th March 2017. In support of his contention, he relied on medical certificate dated 30th March, 2017 which has been annexed to the application. It is further submitted that thereafter again the applicant had undergone treatment for food poisoning and fever on 27th April, 2017 and 29th April, 2017 and subsequently on 1st May, 2017 to 31st July, 2017. The copy of

medical certificate date 29th April, 2017 is annexed to the application. It is submitted that applicant would abide any conditions imposed by this Court and is willing to attend the police station as and when directed by this Court. It is submitted that there is no intention to avoid investigation. The applicant would co-operate with the investigation.

4. Learned APP submitted that although, the order granting anticipatory bail was passed on 18th March, 2017, the applicant had faulted conditions imposed by the said order and did not attend the police station. On account of his non-cooperation the chargesheet could not be filed. It is further submitted that pursuant to the directions of this Court, the statement of the Medical Officer who had issued the Medical Certificate to the applicant which are annexed to this application and his statement was recorded on 12th July, 2017. The statement indicates that the applicant had approached the doctor for the ailment. However, at the instance of the applicant, certificate was issued stating that he requires bed rest as he represented as that same is required for submitting in his office. The doctor has not denied the issuance of said certificate.

5. While granting anticipatory bail, the Sessions Court had

observed that the prosecution had applied Section 120 B of Indian Penal Code in the FIR, however, question of applying the said provision to commit alleged offence and Section 354 of Indian Penal code does not arise. The applicant was not on the spot and did not commit any act amounting to offence under Section 354 of Indian Penal Code. It was also observed that except Section 354 and 452 of Indian Penal Code all other offences are bailable in nature. The overact for commission of offence under Section 354 of Indian Penal Code was not attributed to the applicant. It was further observed that all other sections are bailable in nature and custodial interrogation of the applicant is not necessary, and pendency of two cases cannot be a ground for rejection of anticipatory bail. It is noted that the order of granting anticipatory bail was not executed, applicant was not arrested and chargesheet is not yet filed against the accused.

6. Taking into consideration the aforesaid factual aspect and considering the fact that the bail was cancelled on account of not attending the police station, order passed by the Sessions Court can be set aside on certain terms and conditions.

ORDER

(i) Criminal Application No. 791 of 2018 is allowed;

- (ii) Impugned order dated 27th March, 2018 is set aside. The order dated 18th March, 2017 stands restored;
- (iii) In accordance with the earlier order, the applicant is released on executing PR Bond and Surety of Rs.15,000/- in the event of his arrest in Cr.No. 95 of 2017 for the offence punishable under Section 452, 323, 354, 427, 143, 144, 147, 149, 504, 506, 120(B) of the Indian Penal Code registered at Khar Police Station;
- (iv) The applicant is directed to attend the Khar Police Station twice in a week on Monday and Friday between 10.00 a.m. to 12 noon.
- (v) Criminal Application stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.07.21
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(PRAKASH D. NAIK, J.)