

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1313 OF 2017

Rajeev Satish Kalbag and anr. ...Applicants.

vs.

State of Maharashtra ..Respondent.

Mrs. Madhavi M.Tavanandi for the Applicant.

Mr.Rajendra Desai for the Intervener.

Mr.A.A. Palkar, APP for the Respondent-State.

CORAM :A.S.GADKARI, J.

DATE : 14th February, 2018

P.C.

1. By the present application the applicants have impugned the order passed by the learned Additional Sessions Judge, Greater Mumbai in Misc. Application No.353/2016 in ABA No.785/2016 thereby cancelling the anticipatory bail granted to the applicants by its order dated 17.7.2017.

2. The applicants are accused in CR No.113/2016 under Section 498(A) read with 34 of the Indian Penal Code registered with Matunga Police Station, Mumbai. After lodgment of the first information report the applicants preferred an application under Section 438 of the Cr.P.C. for pre-arrest bail before the Sessions Court at Mumbai bearing ABA No.785/2016. The learned Additional Sessions Judge by its order dated 7.5.2016 was pleased to grant pre-arrest bail to the applicants with

certain conditions. The condition No.2 therein reads as under:-

“The applicants/accused shall not leave India without prior permission of the Court.”

As both the applicants violated the said condition, prosecuting agency filed Misc. Application No.353/2016 for cancellation of anticipatory bail granted to the applicants in ABA No.785/2016. The said application came to be allowed by the impugned Order dated 17.7.2017.

3. Heard the learned counsel for the applicants, learned counsel for respondent No.2 and the learned APP. Perused the record.

4. The learned counsel appearing for the applicants submitted that as a matter of fact before passing of the said order dated 17.7.2017 the applicant No.1 had left the country and was at New Zealand for pursuing his higher education. She further submitted that, as far as Applicant No.2 is concerned, she had been to USA for meeting her daughter and she immediately came back. She submitted that the applicant No.2 admits her mistake. She further submitted that the applicants were not having any intention to commit any breach of the conditions imposed upon them by the Trial Court. She submitted that, the applicant No.2 is 75 years of age and at

present she has deposited her passport with the Investigating Agency and therefore, there is no question of her absconding any more. She further submitted that, the applicant No.1 is unable to come to India as he has recently got a job at New Zealand. She therefore prayed that the present application may be considered sympathetically and also on humanitarian grounds and the impugned order may be set aside.

5. Mr. Desai, the learned counsel appearing for the respondent No.2 vehemently opposed the application and submitted that with a view to cause loss and/or stalemate to the future of respondent No.2 the applicant No.1 herein has transferred the residential premises in favour of applicant No.2 which was gifted to respondent No.2 by her father and has caused wrongful monetary loss to the Respondent No.2. He further submitted that the impugned order passed by the Trial Court need not be interfered with in the interest of justice and prayed that the application may be rejected.

6. As noted herein above and after perusal of record, it appears that while granting pre-arrest bail to the applicant, the aforesaid specific condition No.2 was imposed upon them by the Trial Court. Assuming for the sake of arguments that, the applicant No.1 had earlier left India i.e.prior to 7.5.2015, the

applicants did not take any pains for modification of the said order and the said order till today holds field and the conditions mentioned therein for pre arrest bail are to be obeyed without any demur. In the premise, it is the specific case of the persecution that the applicants in breach of the said condition had traveled outside India without taking prior permission of the concerned Court. The violation of conditions imposed upon the accused while granting bail is itself a serious concern and has to be dealt with sternly. The conditions of bail are imposed for obeying it and breach of the said conditions would attract the provisions of Section 439(2) of the Cr.P.C. In the present case the record is eloquent to clearly indicate that the applicants have clearly violated the condition imposed upon them by Order dated 7.5.2016. According to me, there is no error either in facts or law in the impugned Order dated 17.7.2017 and the interference therein by this Court is unwarranted.

6. Application is accordingly rejected.

7. At this stage the learned counsel for the applicant submitted that the applicant would like to challenge the correctness of the present order before the Honourable Apex Court and the interim Order dated 26.7.2017 be continued for a

period of 4-weeks from today. Mr. Desai, learned counsel appearing for respondent No.2 opposed the said prayer. However, in the interest of justice the interim relief granted earlier is hereby extended by four weeks from today.

(A.S.GADKARI, J.)