

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

CRIMINAL APPLICATION NO.938 OF 2018

Shrikant Gangaram Kambekar

.. Applicant

Vs.

Sunil Shyamsunder Kedia & Ors.

.. Respondents

.....

Mr.Subhash Jha i/b. M/s.Kumar & Associates, Advocate for the Applicant.

Mr.Rafique A. Shaikh, Advocate for Respondent No.1.

Mr.Mhod. Umar Z. Kazi, Advocate for Respondent No.2.

Mr.P.H. Gaikwad, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 10, 2018.

P.C. :

The only grievance made in this application is that the applicant who is the original complainant was not heard while passing impugned order dated 25th July, 2018 in the application for anticipatory bail preferred by respondent nos.1 and 2, before the Sessions Court.

2 Admittedly, applicant is the original complainant/first informant. Offence has been registered vide CR No.I-236 of 2018, under Sections 420, 467, 468, 471, 199 and 200 read with

Section 34 of Indian Penal Code ("IPC", for short), with Khadakpada Police Station, Kalyan, District-Thane. Apprehending arrest, respondent nos.1 and 2 preferred anticipatory bail application no.1210 of 2013, before the Additional Sessions Judge, Kalyan. Applicant being the complainant, preferred an application for intervention. Learned Sessions Judge by order dated 23rd July, 2018, disposed of the said application for intervention with an observation that the Court is of the view that if the Courts grants interim anticipatory bail to the applicants and notice is issued to the police and respondents, at that stage, the advocate for the complainant/ informant can be heard in addition to the arguments of learned APP. At the stage of interim pre arrest bail, hearing the arguments of original complainant is not tenable. The application was thus rejected.

3 Learned counsel for the applicant submits that the learned Sessions Judge while granting interim relief to the respondents has made detailed observations on merits of the case. Although, the applicants are permitted to advance arguments at the latter stage, the observations made while granting interim order may come against the interest of the complainant. Learned counsel for the respondents submitted that, the applicant has been permitted to intervene at latter stage and

interim order has been passed by Court. He relied upon the decision of this Court delivered in Criminal Application No.566 of 2013, dated 24th June, 2013 (Coram : K.U. Chandiwal,J), wherein in a similar situation this Court had observed that the Sessions Court shall not be influenced by the primary observations in the order granting interim anticipatory bail and the Sessions Court was directed to give hearing to both sides and pass appropriate order. It is submitted that similar order can be passed in this matter. Since the Sessions Court had already granted interim relief, the Sessions Court shall hear both sides including applicant while deciding the application for anticipatory bail, and, while passing final order, the Court shall not be influenced by the primary observations made while granting interim protection to respondent nos.1 and 2. It is stated by both parties that next date before Sessions Court is on 16th August, 2018.

4 The Sessions Court would decide the application for anticipatory bail in accordance with law. In the circumstances, and with the aforesaid observations, Criminal Application is disposed of.

5 Parties to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)