

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1810 OF 2018

Shamrao Rauso Kashid

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Ashok Mundargi, Senior Advocate a/w. Mr.N.S. Mundargi i/b.
Mr.Omkar Prashant Mulekar for the applicant.

Mr.Arfan Sait, APP for the respondent/State.

Mr.Abhijit Patil, PSI, Tulinj Police station, Palghar.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th SEPTEMBER 2018

P.C. :

1. This is an application for anticipatory bail in CR No.472 of 22018 registered with Tulinj police station, Palghar for the offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code and Under Sections 3 and 4 of the Maharashtra Ownership of Flats Act, 1963 and Under Sections 52, 53, 54 of the Maharashtra Regional and Town Planning Act, 1966.

2. The application has been preferred in peculiar circumstances. The applicant was not sought to be arrested during the course of investigation. The police conducted investigation and the chargesheet is filed. While filing the chargesheet against the applicant, it is stated that the applicant had appeared before the investigation officer in accordance with the notice issued under Section 41(A)(1) and he has cooperated with investigation. Nothing was required to be recovered from the applicant and hence he has not been arrested.

3. The applicant however apprehended that he may be taken into custody as and when he appears before the trial Court. It is submitted that the applicant is charged for offences as stated hereinabove and there is likelihood that the applicant would be taken into custody as and when he appears before the Court for filing bail application and executing appropriate bond. It is submitted that the concerned Court in similar situation has taken the accused in custody when they had appeared before the Court in pursuant to filing of chargesheet.

4. In view of the aforesaid circumstances, anticipatory bail application was preferred by the applicant before Sessions Court. The learned Sessions Judge rejected the application for anticipatory bail vide order dated 9th August, 2018 and the trial Court was directed to decide the Bail Application if filed by the

applicant as earlier as possible. It is submitted that in view of the said order, in the event applicant prefers application for bail, it will be discretion of the Court to consider the said application on the same day or any other day and which would may result in his detention. On perusal of the order passed by the Sessions Court, it appears that the learned Sessions Judge has observed that the apprehension of the applicant is not sustainable because the investigating officer has himself stated that he did not find it necessary to arrest the applicant.

5. It is further observed that in view of the decision of this Court delivered in Criminal ABA No.492 of 2014, the application for anticipatory bail is not maintainable. I have perused the said decision of this Court, it is delivered in completely different context and not as observed by the Sessions Court. The learned Sessions Judge has observed that there was no apprehension of arrest and thus the application is rejected. The learned Advocate for the applicant, relied upon order passed by this Court in Criminal ABA/1728 of 2017. In the said order, it was recorded that the investigating officer has completed investigation and police are in process of filing chargesheet and therefore the protection of the pre-arrest bail can be granted to the said applicant.

6. Admittedly, investigation is completed and chargesheet has

been filed and the prosecution has made it clear that the applicant was not arrested on account of his cooperation during investigation. The Sessions Court however directed that the applicant may prefer application for bail and the Court is directed to decide the same as early as possible. Taking into consideration, the nature of allegation and factual aspect as stated hereinabove, it would be travesty of justice in case the applicant is taken into the custody as and when he appears before the trial Court and prefers an application for bail. In the circumstances, this application is required to be allowed. Hence the following order;

:: ORDER ::

- (i) In the event of arrest of the applicant in connection with CR No.472 of 22018 registered with Tulinj police station, Palghar which is subject matter of RCC No.595 of 2018 pending before the Court of JMFC Vasai, the applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- with one or more surety in the like amount.

- (ii) Criminal Anticipatory Bail Application is disposed of.

Vina
Arvind
Khadpe

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Vina Arvind
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Date:
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[PRAKASH D. NAIK, J.]