

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

ANTICIPATORY BAIL APPLICATION NO. 2079 OF 2018

Mr. Pankaj Limbachiya and anr. ... Applicant.

V/s.

The State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 2080 OF 2018

Mr. Nitin Tanna ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. S.V.Marwadi, S.R. Mhatre and Ashok Dubey for the Applicants.

Mr. Mohan Pillai i/by Mr. Mrinal Pillai and Mrs. Madhavi M. Pillai for original complainant/Intervener.

CORAM : A.S.GADKARI, J.

DATE : 24th October, 2018

P.C.:

1. These are successive pre-arrest bail applications preferred by the applicants. The earlier bail application preferred by the applicants was dismissed as withdrawn by an Order dated 10.8.2018.

2. The said Order dated 10.8.2018 reads as under.

“After hearing the learned counsel for the applicants at length and after taking into consideration the serious allegations against the applicants, when this Court was not inclined to grant any relief, the learned counsel on instructions seeks leave to withdraw the present application with liberty to surrender before the concerned Magistrate having jurisdiction over Kandivali Police Station on or before 11.00 a.m. of 17.8.2018.

Leave and liberty granted.

2. Dismissed as withdrawn with the aforesaid liberty.”

3. It is to be noted here that, on 10.8.2018 a solemn statement was made by the applicants before this Court that, they will surrender before the concerned Magistrate having jurisdiction over Kandivali Police Station on or before 11.00 a.m. of 17.8.2018. It appears that, the said statement has not been honoured by the applicants which ground alone is sufficient to reject the present application.

It appears from the record that, the Investigation officer has not taken any pains to arrest the applicants after lapse of the said period.

4. Heard Mr. Marwadi, learned counsel appearing for the applicants at length and Mr. Pillai for the first informant. The contentions raised by the applicants are in the form of review of the earlier Order which is not permissible under the law.

5. This Court in the case of Kamlesh Dhirajlal Gandhi vs. State of Maharashtra reported in 2005 0 Cr.LJ 2086: All MR (Cri.) 2007 0 1572 in Para 20 has held as under:

“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 the 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 applications 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 obsolete. In that view of the matter, the present applications are tenable in law. "

6. After perusing the entire record this Court is of the considered view that, there is no change in the facts situation of the present case least to say any substantial change which would make the earlier view of this Court obsolete.

7. In view of the above, both the applications are rejected.

(A.S.GADKARI, J.)