

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1202 OF 2017

Dharyashil Arun Doifode	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH

CRIMINAL APPLICATION NO. 1203 OF 2017

Samadhan Arun Doifode	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mr.D.S.Mhaispurkar with Ashish Sawant for the applicants.

Mr.Ajay Patil, APP for the State.

CORAM: SMT.BHARATI DANGRE, J.

DATED : 26th SEPTEMBER, 2019

P.C:-

1 The applicants who were arraigned as accused in the two C.Rs registered under Section 135 of Indian Electricity Act, 2003 have approached this Court being aggrieved by an onerous condition imposed while considering the application preferred by him under Section 438 of the Code of Criminal

Procedure i.e. an Anticipatory Bail. The Addl. Sessions Judge, Barshi, allowed the application and directed that in the event of arrest, the applicants be released on furnishing personal bond to the tune of Rs.One lakh with two or more sureties of the like amount. In addition, a condition was also imposed to deposit 50% of the theft amount of electricity. It was directed that the said amount shall be deposited directly with the MSEB Co.Ltd within three days from the date of the order, failing which the order would become inoperative and the police officer would be at liberty to arrest the applicant for further investigation.

2 The applicants have assailed imposition of this condition and according to the learned counsel, imposition of this stipulation is not permitted while entertaining an application under Section 438 or 439 of Cr.P.C. He placed reliance on the judgment of the Apex Court in case of ***Sumit Mehta Vs. State, of NCT, Delhi***,¹. The ratio that emerges from the opinion expressed by the Apex Court in the backdrop of the fact where the High Court had directed the appellant to deposit

1 AIR 2013 SC 2418

Rs. One crore in Fixed Deposit in the name of complainant and to keep the FDR with the Investigating Officer as a pre-condition of grant of Anticipatory Bail, the imposition of such condition was held to be unreasonable and onerous, in context of the facts and circumstances of the case. Though the Court has observed that this will not exclude in the cases of cheating, electricity pilferage, white collar crimes, cheat fund schemes, considering the nature of the involvement of the accused, such a condition can be imposed.

The word of caution however came to be expressed by their Lordships by observing that it is the duty of the Court to strike balance between the personal liberty and right of instigation of police.

3 It is no doubt true that an accused can be subjected to conditions while considering his application for Anticipatory Bail or grant of bail and the conditions enumerated under Section 438(2) of the Cr.P.C are aimed at imposing such conditions which would ensure fair and uninterrupted investigation and trial. The Apex Court has clarified (*supra*)

that such conditions which depart from the said object are impermissible.

4 Learned counsel for the applicants makes a statement that being charged under Section 135 of the Indian Electricity Act, 2003, they had subjected themselves to the civil jurisdiction vested under the provisions of Electricity Act and in particular, section 154(5). The said authority has determined the interim liability and the learned counsel for the applicants make a categorical statement that the amount so determined has already been deposited with the MSEB Co.Ltd.

4 In such circumstances, the present applications deserve to be allowed and the condition of imposition of the stipulation of deposit of 50% of the theft amount of electricity as a pre-condition for grant of Anticipatory Bail is quashed and set aside.

SMT. BHARATI DANGRE, J