

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

CRIMINAL WRIT PETITION NO. 320 OF 2019

Fajle Rahim Abdul Latif Khan

...Petitioner

Versus

The Officer in charge / SHO, Silvassa Police
Station, Silvassa.

...Respondent

Mr.Devmani J. Shukla for the petitioner.

Mr.H. S. Venegaonkar for respondent no.1.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 30th JANUARY 2019

P.C. :

1. Rule. Rule made returnable forthwith.
2. The learned counsel waive notice of Rule.
3. Heard finally at the stage of admission by consent of the parties.
4. This petition is directed against the order dated 16th November 2018 and 7th January 2019 passed by the learned Sessions Judge of Dadra and Nagar Haveli, Silvassa.
5. The learned Counsel for the petitioner submits that he is not

pressing the relief against the order dated 16th November 2018 but challenging the order dated 7th January 2019 passed the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa in Cri. Misc. Bail Application No.72 of 2018. He points out that the order dated 5th January 2019 passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa by which the Investigating Officer was directed not to arrest the petitioner/applicant till the next date of hearing of the matter. In the said order, advocate for the petitioner/applicant made a statement that applicant undertakes to surrender the original Will to the P.P. on the next date of hearing and the matter is adjourned to 24th January 2019. However, on 7th January 2019, the advocate for the applicant/petitioner who was appearing in Sessions Court filed a withdrawal pursis (resigning as an advocate) on the ground of non production of the Will by the applicant/petitioner to the Investigating Officer. The said pursis/application was accepted and the discharge pursis of the advocate of the petitioner/applicant was allowed. Admittedly on that date, the applicant/accused was absent. The learned Counsel pointed out though by order dated 5th January 2019, the matter was scheduled to 24th January 2019 and till that date the petitioner was granted protection, on 7th January 2019 in the absence of the applicant/accused, the learned Sessions

Judge rejected the bail application without giving audience to the applicant/accused. Hence, the order dated 7th January 2019 needs to be set aside.

6. The learned Counsel for the respondent concedes that the petitioner/ accused was not heard on 7th January 2019 and the matter was preponed from 24th January 2019 to 7th January 2019.

7. Considered the present application and perused the orders dated 5th January 2019 and 7th January 2019 alongwith the pursis made by earlier advocate on record for discharging him as advocate. The petitioner/accused was aware of such withdrawal on 6th January 2019. Hence, the order of the learned Sessions Judge discharging the advocate on 7th January 2019 cannot be faulted with.

8. However, the order of preponing the matter from 24th January 2019 to 7th January 2019 without intimating the petitioner/accused is illegal. The petitioner/accused was not represented on that day and, therefore, it is necessary in the interest of justice that the learned Sessions Judge to give time to the petitioner/accused to file his appearance through his advocate. Under these circumstances, the following order is passed;

ORDER

- i) The impugned order dated 7th January 2019 rejecting the anticipatory bail application is hereby quashed and set aside.
- ii) Anticipatory Bail Application rejected by order dated 7th January 2019 is restored to file.
- iii) The learned Sessions Judge, Dadra and Nagar Haveli, Silvassa is directed to hear Anticipatory Bail Application on or before 13th February 2019.
- iv) The interim protection granted by order dated 7th January 2019 is extended till 13th February 2019.
- v) Parties are directed to appear before the Sessions Judge on 7th February 2019.
- vi) All contentions and the arguments on all issues of both the parties are kept open.
- vii) Rule made absolute accordingly.
- viii) Writ Petition stands disposed of.
- ix) Parties to act upon authenticated copy of this order.

[MRIDULA BHATKAR, J.]