

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.486 OF 2019

Irfan Munav Divte	Applicant
versus	
The State of Maharashtra	Respondent

AND

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.561 OF 2019

Imran Divte	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Rajiv Patil, Senior Advocate, with Ms.Sonal Parab I/by Shakh M. Shoaib for Applicant in ABA No.486 of 2019.

Ms.Sonal Parab I/by Rajeev Sawant & Associates for Applicant in ABA No.561 of 2019.

Mr.A.R.Kapadnis, APP, for State.

Mr.Jaysing Jaybhaye, PSI, Shivaji Nagar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th August 2019

PC :

1. These are applications for anticipatory bail in connection with CR No.315 of 2016 registered with Shivaji Nagar Police Station, Govandi, Mumbai. The charge is under Sections 307, 395, 397, 427 r/w 34 of Indian Penal Code. In view of the order dated 18th July 2019 passed by co-ordinate Bench, the matters were listed before me.

2. The applicant Irfan Divte preferred application for anticipatory bail viz ABA No.1813 of 2016 before Sessions Court

which was rejected vide order dated 19th October 2016. Thereafter he had preferred ABA No.2097 of 2016 before this Court which was rejected vide order dated 6th December 2016. Both the applicants had preferred application for anticipatory bail before Sessions Court viz ABA No.872 of 2017, which was rejected vide order dated 23rd June 2017. Applicant Imran Divte had preferred anticipatory bail application before this Court viz ABA No.156 of 2017. The said application was rejected by order dated 4th April 2017. Both applicants then preferred ABA No.1127 of 2017 before this Court. The fact that applicant Imran had preferred an application for anticipatory bail before this Court and the same was rejected on 4th April 2017, was suppressed while preferring ABA No.1127 of 2017. Shockingly even while preferring ABA No.872 of 2017 before Sessions Court, the said applicant had suppressed the said vital fact. When the said fact was brought to notice while adjudicating ABA No.1127 of 2017, the application on behalf of applicant Imran was not pressed. The said application was disposed off vide order dated 1st July 2017. Relief was also not granted to applicant Irfan. In spite of the aforesaid conduct, the applicants have preferred present applications for anticipatory bail.

3. Learned Senior Advocate Mr.Patil and learned counsel Ms.Parab submit that there is cross FIR registered vide CR No.316 of 2016. The parties have arrived at settlement and the petition for quashing is pending before the Division Bench of this Court. The said writ petition is apparently pending since April-2018. The present applications are pending in this Court since February-2019. Pendency of the said petition is no ground for granting relief prayed in this applications. Learned APP submitted that there is no change

in circumstance. Earlier applications were rejected. One of the applicant has suppressed the fact that his earlier application was rejected by this Court and had preferred subsequent application before this Court as well as Sessions Court. Custodial interrogation of the applicants is necessary. The applicants are absconding.

4. The conduct of applicants is required to be deprecated. The FIR was registered on 7th August 2016. Since then the applicants are evading arrest. The application of applicant Imran was rejected by this Court on 4th April 2017. This Court had observed that taking into consideration the serious allegations against the said applicant, the gravity of the offence and the need for recovery of weapon used by accused in crime, he does not deserve to be released on bail. Despite the aforesaid rejection of application, he preferred ABA No.872 of 2017 before Sessions Court and ABA No.429 of 2017 before this Court by suppressing earlier order dated 4th April 2017. Whereas, while rejecting application of applicant Irfan Divte by Sessions Court by order dated 19th October 2016, it was observed by Sessions Court that there is material to show the involvement of applicant and role attributed to him as to assault by iron rod to the witnesses. This Court while rejecting his application by order dated 6th December 2016 observed that he was named as group leader who assaulted the complainant with specific role. The applicant Irfan preferred another application before Sessions Court with accused Imran which was rejected on 23rd August 2017. The Court had observed that both the applicants have evaded investigation since 11 months and cannot claim benefit of charge sheet filed against co-accused. While rejecting ABA No.1127 of 2017 this Court has observed that the applicant Irfan is absconding and evaded arrest.

Thus it is evident that the applicants are repeatedly preferring applications for anticipatory bail. Since the date of FIR, they have been avoiding arrest since last three years. In the aforesaid circumstances, no case for granting relief under Section 438 of Code of Criminal Procedure is made out. Hence, both the applications are rejected.

(PRAKASH D. NAIK, J.)

MST