

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.789 OF 2019

Mahesh Pandurang Naik, Age 52 years,
Occ.Business, R/o.Naleshwar Apartments,
Achole Road, Nallasopara (E),
Tal.Vasai, Dist.Palghar.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vedchetan Patil for applicant.

Ms.P.P.Shinde, APP, for State.

Mr.Ranjitsing Pardeshi, API, Virar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th August 2019

PC :

1. This is the second application for anticipatory bail preferred by the applicant before this court in connection with CR No.1329 of 2018 registered with Virar Police Station for the offence punishable under section 420 r/w 34 of Indian Penal Code. The FIR was registered on 24th November 2018. The previous application for anticipatory bail preferred by the applicant viz Anticipatory Bail Application No.2710 of 2018 was rejected by order dated 4th January 2019.

2. The applicant thereafter preferred Special Leave Petition (Cri) No.951 of 2019 before the Hon'ble Supreme Court. The said petition has been dismissed vide order dated 18th February 2019.

3. This application was listed before the regular Court taking up the applications for anticipatory bail and by order dated 9th August 2019 the Court directed that present application be placed before me in view of earlier rejection order dated 4th January 2019. The regular Court had observed that no new factor has cropped up and there is no change in circumstance and the application be listed before the same Judge who has rejected the earlier application.

4. Learned counsel for the applicant submits that the relevant document at page 161 of this application seeking permission for non agricultural use, was not pointed out to the Court. It is further submitted that the applicant is willing to deposit the amount involved in the transaction. Custodial interrogation of the application is not necessary.

5. Learned APP submitted that there is no change in circumstance. The Special Leave Petition preferred by the applicant has been dismissed by Supreme Court and hence the applicant cannot seek the same relief by preferring second application for anticipatory bail before this Court. It is further submitted that the earlier order dated 4th January 2019 indicates that this Court has considered the nature of evidence against applicant and rejected the application.

6. Vide order dated 4th January 2019 I had rejected the earlier application for anticipatory bail by assigning reasons. The applicant had thereafter preferred special leave petition before Supreme Court, which has been dismissed on 18th February 2019. The said order reads as under :

“SLP (Crl) No.951 of 2019 :

On the earlier occasion, the court was informed by the learned counsel for the petitioners that the document at page 36 of the SLP paper book was part of record before the High Court, now on instructions he submits that submission is factually incorrect. That was the only basis for which we issued notice. Hence, the Special Leave Petition is dismissed.

Pending applications, if any, stand disposed of.

SLP (Crl) Nos.1296-1297/2019 :

Leave granted.

The Criminal Appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.”

7. The applicant is avoiding arrest since 24th November 2018. The co-accused who had earlier preferred Special Leave Petition (Crl) No.951 of 2019 along with applicant, has been arrested during pendency of this application. On perusal of the orders of Supreme Court dated 18th February 2019 and 5th February 2019 it is apparent that the applicant has been making contradictory statements.

8. The learned counsel for applicant had placed reliance upon decision of Rajasthan High Court delivered in the case of Sorab Vs. State of Rajasthan and another (2012-SCC OnLine-Raj-3798) and contended that second application is maintainable.

9. In the facts of present case, the ratio laid down in the said decision cannot be applied. For the reasons stated hereinabove, no

case for grant of anticipatory bail is made out. Hence, this application is rejected.

(PRAKASH D. NAIK, J.)

MST