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

CRIMINAL APPLICATION NO. 343 OF 2018

Janvi Ajay Surve

..Applicant

Vs

The State of Maharashtra & Anr.

..Respondents

WITH

CRIMINAL APPLICATION NO. 344 OF 2018

Janvi Ajay Surve

..Applicant

Vs

The State of Maharashtra & Ors.

..Respondents

Ms. Shilpa Dhumal a/w S. Inamdar I/b Hulaylkar & Associates for the applicant.

Mr. S.S. Hulke, APP for the State.

Mr. Niranjana Mundargi for the Respondents.

CORAM : A.S.GADKARI, J.

DATE : 25th March 2019.

P.C.:

1] This is an application under Section 439(2) read with section 482 of Cr. P.C impugning Orders dated Order dated 7th June 2018 and 4th May 2018 respectively, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai thereby granting pre-arrest bail to the respondents/accused.

2] Heard the learned counsel for the applicant, the learned counsel for the respondents/accused and the learned APP for the State. Perused the record.

3] The applicant is the first informant in CR No.135 of 2018 registered with Meghwadi Police Station, Mumbai under Sections 376, 323, 506 of the Indian Penal Code and sections 3 and 4 of Dowry Prohibition Act, 1961.

4] By the impugned Orders, the learned Additional Sessions Judge has granted pre-arrest bail to the respondents/accused. The learned counsel for the applicant submitted that, after the impugned Orders are passed the police have now added Sections 406 and 420 of the Indian Penal Code to the present crime and therefore the custodial interrogation of the respondents is necessary. She further submitted that, the applicant was not heard by the Trial Court at the time of deciding pre-arrest bail applications and this is also a ground to challenge the impugned Orders.

5] At the outset, the learned counsel for the respondents submitted that, in para-7 of the impugned Order dated 7.6.2018 it is specifically mentioned that, the Intervener was heard at the time of deciding the said application and therefore the contention of the applicant that, she was not

heard at the time of deciding the said application by the Trial Court has no substance in it.

6] The first information report mentions that, the applicant was aged about 26 years at the time of lodgment of the crime and is an educated lady. She has signed the first information report in the presence of a lady Police Officer after recording her statement. Therefore, the contention of the applicant that, her first information report was not recorded as per her narration, cannot be accepted. It is the settled position of law that, in case of a higher grade offence is added subsequently to the crime, the bail can be cancelled. In the present case, the situation is vice-versa i.e. the added sections to the present crime prescribes lesser punishment than section 376 of Indian Penal Code which section is applied to the present crime at its inception. Under Section 376 of the Indian Penal Code the maximum punishment prescribed is upto life imprisonment, whereas under section 420 the maximum punishment prescribed is for 7 years. Reliance is placed on the decision of the Apex Court in the case of Prlhad Singh Bhati Vs. NCT, Delhi & Ors, reported in (2001) 4 SCC 280.

7] A further reliance can be placed on a decision of the Supreme Court in the case of Puran Vs. Rambilas & Anr reported 2001 AIR SCW

1935 which lays down the parameters for cancellation of bail. In view of the ratio laid down by the Supreme Court in the said case, no case for cancellation of anticipatory bail in the present applications is made out. The Trial Court after taking into consideration various attending circumstances has passed the impugned Orders. Even otherwise, the impugned Orders are well-reasoned which require no interference by this Court. There is no error either in law or on facts in the impugned Orders.

8] In view thereof, both applications are accordingly rejected.

(A.S.GADKARI, J.)