IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 ANTICIPATORY BAIL APPLICATION NO. 720 OF 2020
WITH APPLN/1721/2020 IN ABA/720/2020
WITH APPLN/2037/2020 IN ABA/720/2020

1. Sayyad Nadimulhaq S/o. Sirajulhaq,
   Age. 60 years, Occ. Retired,

2. Sayyed Moizulhaq S/o. Nadimulhaq,
   Age. 26 years, Occ. Business,

Both applicants R/o. Pirjad Galli,
Tq. Vaijapur, Dist. Aurangabad. ...Applicants.

Versus

1. The State of Maharashtra.

2. The Superintendent of Police,
   Aurangabad (Rural), Dist. Aurangabad. ...Respondents.

Advocate for Applicants : Mr. D.R. Deshmukkh and Mr. Akshay Kulkarni.
APP for Respondent : Mr. V.M. Kagne.

CORAM : MANGESH S. PATIL, J.
DATE : 24.11.2020

Per Court :

Learned Senior Advocate Mr. Deshmukkh on instructions seeks leave to withdraw the application for anticipatory bail.

2. He submits that the applicants were seeking anticipatory bail. This Court by the order dated 18.09.2020 had granted ad interim protection

subject to certain conditions *inter alia* of depositing an amount of Rs. 3,00,000/- on or before 23.11.2020. However in the meantime one of the applicants that is the applicant No. 1 has died. The applicants are in fact the victims. They have independently lodged a separate FIR against couple of other persons who are the co accused Nos. 3 and 4. Now that the father is no more, the applicant No. 2 is not intending to prosecute the application and is seeking leave to withdraw it. He has also filed undertaking that he would surrender before the Investigating Officer on or before 27.11.2020. He, therefore, submits that a separate application No. 2037/2020 has been filed to that effect and the application may be disposed of and the amount of Rs.3,29,000/- deposited by the applicants in this Court pursuant to the order dated 18.09.2020, be refunded to the applicant No. 2.

3. Learned APP and the learned Advocate for the original informant submit that the applicant No. 2 is misusing the process of the Court. By showing willingness to deposit the money an interim relief has been solicited avail of and enjoyed till date and at the fag end the application is now being sought to be withdrawn. They, therefore, submit that the application may be allowed to be withdrawn but the amount may not be refunded.

4. The learned advocate for the informant further submits that in fact the informant himself has filed a separate application N0. 1721/2020 seeking withdrawal of the amount deposited by the applicants in this Court. He, further, submits that as far as request of the applicant No. 2 now to withdraw the amount deposited in this Court, instead of refunding it to him the amount may be directed to be transmitted to the Trial Court.

5. Without indulging into the merits it is suffice to observe that the applicant No. 2 is now seeking to withdraw the application and has undertaken to surrender before the Investigating Officer on or before 27.11.2020, the request being innocuous can easily be accepted.

6. So far as the conduct of the applicants and the motive attributed to them by the prosecution is concerned, it is a matter of record that after having expressed their willingness to deposit money in this Court to show their bona fieds, considering other facts and circumstances, by the order dated 18.09.2020, the applicants were granted ad interim protection subject to the conditions *inter alia* for depositing an amount of Rs. 3,29,000/- during the course of the day and granting further time to deposit an amount of Rs. 3,00,000/- on or before 23.11.2020. It is quite apparent from condition 'C'

imposed in this order that failure to deposit the money was to result in recalling of the interim bail with immediate effect. It is thus quite clear that it was a conditional order. The amount of Rs. 3,29,000/- was to be deposited on the same date whereas an amount of Rs. 3,00,000/- was to be deposited on or before 23.11.2020. It is also quite clear that even the consequence of disobedience of both these conditions was spelt out specifically in clause ‘C’. Whatever may be the reasons which might have persuaded this Court to impose such conditions, it is not an unusual case wherein this Court has allowed the applicants to deposit money in this Court to show bona fides. If the conditions are not obeyed the consequences would follow. Therefore, merely because the applicants have now failed to deposit the amount of Rs. 3,00,000/- on or before 23.11.2020, one cannot *ipso facto* conclude that it is a misuse of the process of the Court.

7. As far as the amount which stands deposited in this Court by the applicants is concerned, it cannot be said that it is a property which is involved in the crime unless the Investigating Officer comes with a specific stand. It being not a stolen property, no right is created in the informant at this juncture.

8. In view of the above state of affairs, the Anticipatory Bail Application No. 720/2020 is dismissed as withdrawn. The applicant No. 2 shall surrender before the Investigating Officer on or before 27.11.2020.

9. The amount of Rs. 3,29,000/- deposited by the applicants in this Court be refunded to the applicant No. 2. The Criminal Application Nos. 1721/2020 and 2037/2020 are disposed of accordingly.

(MANGESH S. PATIL, J.)

S.P.C.