

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 10 OF 2020

Santosh Sitaram Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Kanishk Jayant a/w Mr. Jayant Yeshwant Gaikwad a/w Ms. Swaraja Yeshwant Gaikwad, a/w Ms. Antara Jayant, a/w Ms. Unnati Dhurandhar a/w Ms. Billkiss Vivek Bhatia, a/w Mr. Nilesh Mandavkar a/w Mr. Rajey Jain, Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the State-Respondent.

Mr. J. S. Kini a/w Sapna Krishnappa, Advocate for intervenor.

Mr. A. S. Sawant, P. I. Parksite Police Station, Vikroli, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th January, 2020

PC :

1. This is an application for anticipatory bail in connection with C.R. No. 9 of 2018 registered with Parksite Police Station, Vikroli, Mumbai for offences punishable under Sections 307, 143, 144, 147, 148, 149, 552, 427, 336, and 294 of IPC r/w Section 3 of Prevention of Damage to Public Property Act 1984 and Sections 37 (3), 135 of the Bombay Police Act and r/w Section 7 of Criminal Amendment Act.

2. This is the second application for anticipatory bail before this Court. The previous application viz. Anticipatory Bail Application No.

2528 of 2018 was rejected by this Court vide order dated 10th December, 2018. While rejecting the said application this Court had observed that the applicant was present at the scene of offence and has been attributed overt act of assaulting the complainant. Various other observations made on the merits of the case.

3. The applicant had earlier preferred application for anticipatory bail before Sessions Court viz Anticipatory Bail Application No. 61 of 2018 which was rejected on 18th January, 2018. Thereafter he preferred another application before Sessions Court i.e. Anticipatory Bail Application No. 1653 of 2018. The said application was rejected on 2nd November, 2018. Subsequently, as aforesaid this Court had rejected his application for anticipatory bail by order dated 10th December, 2018. The applicant preferred another application before Sessions Court viz. Anticipatory Bail Application No. 2195 of 2019 which is rejected by order dated 31st December, 2019.

4. Learned Counsel for the applicant contends that there is change in circumstance for preferring application for anticipatory bail. It is submitted that the applicant had lodged a complaint against the complainant and others under provisions of Atrocities Act on 14th November, 2018. However no action was initiated by police. The applicant filed private complaint before special Court under Atrocities Act and complainant seeking investigation under Section

156 of Cr.P.C. The said complaint was dismissed on 28th February, 2019. The applicant thereafter preferred Appeal No. 434 of 2019 before Division Bench of this Court. It is submitted that the said appeal was heard by the Division Bench and by order dated 13th December, 2019 the appeal was disposed of by granting leave to the applicant to appear and give statement to the Investigating Officer about the incident which forms subject matter of grievance of his wife and also about his independent grievance in relation to that incident. The Hon'ble Court also recorded statement of learned APP that, if the applicant appears before Parksite Police Station, Vikroli, on 14th December, 2019, his statement would be recorded by Investigating Officer and shall proceed in accordance with law. It is submitted that the appeal was disposed of in view of this development. Learned counsel for the applicant further submits that in pursuant to said order, the statement of the applicant was recorded. The applicant was directed to remain present on 16th December, 2019. Thereafter, the applicant preferred application for anticipatory bail before Sessions Court. It is submitted that the division Bench of this Court acknowledged the right of applicant to appear and give statement to the Investigating Officer for the first time, thereby throwing light on an altogether different aspect of incident dated 3rd January, 2018. The Division Bench had used the

word 'development' while disposing off Criminal Appeal No. 434 of 2019. This is a major change in circumstance. The photographs of applicant and his wife shows that they were present at police station. The statement of applicant was recorded. In view of the statement of the applicant, his case which is informed for independent grievance in relation to the same incident is put forth. This circumstance was not before this Court, when the previous application was rejected by this Court. It is submitted that the Division Bench was aware that C.R. No. 9 of 2018 is pending for investigation from say filed by Police. It is further submitted that the copies of the statements recorded by the police were not furnished to the applicant. It is submitted that the statement of the applicant would reveal his version of the incident. It is submitted that the applicant apprehended arrest in the present FIR and therefore preferred an application for anticipatory bail before the Sessions Court. Interim protection was granted with observations that there is no response from the police and since 2018 no action was initiated. He further submitted that in the light of change in circumstances, the custodial interrogation of the applicant is not necessary. The order dated 13th December 2019, was passed considering the grievance of the applicant. The applicant is falsely implicated in this case. The statement of applicant would support the same.

5. Learned APP submitted that the statement of the applicant was recorded in pursuant to order passed by the Division Bench. The application preferred by the applicant was earlier rejected by the Sessions Court as well and this Court. After the rejection of the application by this Court the applicant was absconding. It is further submitted that the recording of the statements in pursuant to order dated 13th December, 2019 cannot be considered as change in circumstances. This Court by assigning detail reasons had rejected the previous application for anticipatory bail.

6. Learned counsel for the intervenor submitted that, there is no change in circumstances to entertain the present application. The applicant has also preferred an application for quashing the FIR in C.R. No. 9 of 2018 which is pending in this Court. It is submitted that no interim relief is granted in that application. The FIR was registered on 3rd January, 2018. In spite of rejection of applications for anticipatory bail, the applicant had not made himself available for investigation.

7. I have perused the documents on record and also perused the order passed by the Sessions Court rejecting application for anticipatory bail vide order dated 31st December, 2019. The applications for anticipatory bail preferred by applicant were initially repeated on 18th January, 2018 and 2nd November, 2018. Thereafter,

he preferred Anticipatory Bail Application No. 2528 of 2018 before this Court. The said application was repeated on 10th December, 2018. While rejecting the previous application vide order dated 10th December, 2018 in Paragraph 6 it is observed as follows :

“6 I have perused the documents on record. FIR was registered on 3rd January, 2018. it appears that the applicant had preferred two application for anticipatory bail, which were rejected. In the meantime, some of the accused were arrested and they were granted bail. It is also apparent that some of the family members of the applicant have also filed anticipatory bail application, which was allowed. On perusal of the FIR, it is clear that applicant was present at the scene of the offence and has been attributed overtact of assaulting complainant. Charge-sheet has been filed against the arrested accused, which also indicate the involvement of the applicant in the crime. According to the prosecution, CCTV Footage also shows the overt act committed by the applicant. Applicant has been attributed role of instigating the mob which had committed the acts, as stated in the FIR. There are eye witnesses to the incident. Considering the aforesaid circumstances and the role attributed to the present applicant, no case for grant of anticipatory bail is made out. Hence, Anticipatory Bail Application No.2528 of 2018, is rejected.”

8. This Court had assigned reasons while rejecting previous application. This court has considered the merits of the case. The applicant has apparently filed private complaint in January, 2019. It is the grievance of the applicant that, he had lodged complaint to police and his complaint was not taken in to consideration by the police and private complaint was filed by applicant after rejecting of previous application for anticipatory bail by this Court. It is pertinent to note that, the wife of the complainant had also filed the complaint in which directions were issued under Section 156(3) of Cr.P.C. by order dated 26th October, 2018. The trial Court had rejected complaint filed by the applicant by order dated 28th February, 2019 on the ground that the applicant's wife had already preferred a complaint. The investigation in that complaint is going on. The applicant wants to register another FIR. No conclusion can be drawn by labelling that investigation is faulty. The Division Bench had recorded the submissions of the applicant that, he has willing to give his statement to the police. He was promised to appear before police to give statement. The applicant thereafter preferred an application for anticipatory bail before the Sessions Court and interim protection was granted on 16th December, 2019. Statement of applicant was recorded. Learned APP submitted that in view of the order dated 13th December, 2019, the applicant was not arrested when he had

appeared before police for recording the statement. The applicant would have alleged contempt of Court. Applicants statement is recorded. It is submitted in view of his involvement in C. R. No. 9 of 2018, his custodial interrogation is necessary.

9. In the light of the fact that the previous application was rejected on 10th December, 2018, recording the statement of the applicant would not entitle the applicant for grant of relief under Section 438 of Cr.P.C. It is pertinent to note that the FIR was registered on 3rd January, 2018. Thereafter, two applications were rejected by the Sessions Court. This Court by order dated 10th December, 2018 rejected his application. Apparently the applicant was absconding for long period. The FIR and other material disclosed his involvement. The previous order passed by this Court rejecting his application refers to role of applicant in the offence. In these circumstance, no case for grant of bail is made out.

ORDER

Anticipatory Bail Application No.10 of 2020 stands rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)