

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 52 OF 2020

Umesh Vinod GadkarApplicant

V/s.

The State of MaharashtraRespondent

Mr. Aniket Vagal, Advocate for the pplicant.

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

P.I. Mr. Kane, Vileparle Police Station present.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 9th January, 2020.P.C. :

1. Heard.

2. This Court in the case of **Raghunath Krushnaji Kamthe V/s. State of Maharashtra** reported in 2006 (1) LJSOFT (URC) 3 observed that :

“Repeatedly, this court has been emphasizing that interim protection should not be denied when Anticipatory Bail Application is being considered by the Sessions Court. If the Sessions Court is of the opinion that the Applicant

before it is not entitled to Anticipatory Bail, it must pass such orders after hearing parties and perusing materials on the main Application. But when main Applications are kept pending and interim protection is denied, the course adopted is clearly contrary to the mandate provision under section 438 of the Code of Criminal Procedure and particularly applicable in the State of Maharashtra."

3. In the case in hand, the learned trial Judge in order dated 7th January, 2020 has held thus :

". However without written say of the prosecution and case diary, no case is made out to grant any relief in favour of the applicant No.1."

4. The learned Judge, therefore either ought to have granted or refused the interim relief. However, learned Judge has neither granted nor refused it.

5. In view of the order in the case of *Raghunath*

Kamthe (supra), the State is restrained from arresting the applicant in Crime No. 457 of 2019 registered with Vile Parle Police Station till 17th January, 2020.

6. It is made clear, that this Court has not granted the aforesaid relief on merit.

7. The trial Court shall decide the application on merits without being influenced by this order.

8. The Anticipatory Bail Application is disposed off.

(SANDEEP K. SHINDE, J.)