

CRIMINAL WRIT PETITION NO. 579 OF 2021

Mr. Chaitanya C. Deshpande, Advocate for the petitioners
Mr. S. N. Morampalle, APP for the respondent - State

DATED : 15th JUNE, 2021

PER COURT :-

. The challenge in this writ petition is to the order dated 05.04.2021, passed by the Court of Additional Sessions Judge, Dhule, on application Exh.7 in Criminal Bail Application No.274 of 2021. By the impugned order, the petitioners have been directed to remain present before the Court during hearing of their application for anticipatory bail.

2. Shri Chaitanya C. Deshpande, learned Advocate for the petitioners would submit that the learned Additional Sessions Judge has granted the petitioners ad-interim anticipatory bail on the condition of their appearance before the Investigating Officer. The

petitioners have appeared before the Investigating Officer and co-operated with the investigation. If the petitioners remain present before the Court as directed and their application is rejected, they would be arrested immediately. It would be against their right to take further course of action as is permissible in law for protecting their personal liberty. The learned Advocate, therefore, urged for setting aside of the impugned order.

3. The learned APP would, on the other hand, opposed the petition.

4. Section 438(4) of the Code of Criminal Procedure (Maharashtra amendment), reads thus:

“The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.”

5. The learned Additional Sessions Judge, in para 6 of the impugned order has observed thus:-

“6. May be there the situation where the presence of the accused before this Court may simplify some points to understand the trend/conduct of the accused and understand the timely situation, the presence of the accused before this Court may be apprehending the accused of their arrest immediately. However, the accused

are having the opportunity to seek time from this Court to move to the Hon'ble High Court in case the anticipatory bail is denied. Thus, definitely no prejudice is likely to cause the accused rather it may help.”

6. The aforesaid observations undoubtedly indicate that the apprehension of the petitioners that they would be taken into custody if their application for anticipatory bail is rejected, is misplaced.

7. It is reiterated that the petitioners shall obey the order. In case their application for anticipatory bail is rejected, the learned Additional Sessions Judge would ensure that the petitioners would be given a reasonable time to approach the higher Court for anticipatory bail.

8. With these observations, the writ petition stands disposed of.

[R. G. AVACHAT, J.]

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