

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 CRIMINAL APPLICATION NO.2161 OF 2021

(1) Mahesh Sarangdhar Patil
(2) Mayur Sarangdar Patil

VERSUS

The State of Maharashtra

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Advocate for Applicants : Mr. H.F. Pawar
APP for Respondents : Ms. R.P. Gaur

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CORAM : SURENDRA P. TAVADE, J.

DATE : 30th SEPTEMBER, 2021

PER COURT :

This is an application filed for setting aside the order passed by the Sessions Judge, Bhusawal, in Criminal Misc. Application No.33 of 2021 dated 04.09.2021.

2. The applicants are prosecuted for the offences punishable under Sections 302, 307, 323, 504 read with Section 34 of Indian Penal Code. The applicants had filed application for pre-arrest bail before the Sessions Judge, Bhusawal which came to be rejected. Said order was challenged by the applicants before this Court. This Court has also not considered

the prayer of anticipatory bail. Hence, the applicants had preferred petition for Special Leave to Appeal (Cri.) No. 5953 of 2021 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, considering the facts and circumstances of the case, directed the applicants to apply for the said relief before the Trial Court. It was also directed that the application can be considered expeditiously as possible and in accordance with law. The Apex Court has also protected the applicants for three weeks. Thereafter, the applicants have filed an application before the Sessions Court. The Sessions Court passed an impugned order and directed the applicants to surrender before the Court of Judicial Magistrate, First Class, Bhusawal and said order is challenged. Learned counsel for the applicants submits that the Judicial Magistrate is not empowered to grant bail to the applicants as the offence alleged against the applicants is triable by the Court of Sessions. Therefore, the Court of Sessions was competent to entertain the bail application. Hence, application came to be filed before the Sessions Court. The Sessions Court wrongly directed the applicants to surrender before the Magistrate which is not legal and proper. The said order be quashed and set aside.

3. Heard learned A.P.P. for the respondent/ State. According to him, as per Section 437 of Code

of Criminal Procedure, the applicants could have been surrendered themselves before the learned Judicial Magistrate.

4. Learned counsel for the applicant has relied on the ratio'laid down in the case of ***Balkrishan Dhonduraul v. Manik Motiram Jagtap & Anr.***, in ***Criminal Application No. 1060 of 2005***, wherein also the applicant was directed to surrender before the Trial Court for bail for the offences charged against the applicant punishable under Sections 147, 148, 307, 323, 504, 437, 452, 506 of the Indian Penal Code. The Sessions Court had directed the applicants to surrender before the learned Magistrate. This Court has observed that;

“after this Court granted liberty to the Respondent No. 1 to surrender before the appropriate Court and apply for regular bail, if so advised, the Respondent No.1 became liable to surrender before the Court before his prayer for bail could be considered. That does not mean that the Respondent No.1 was obliged to surrender before the Court of J.M.F.C. and could not have surrendered before the Court of Sessions, Raigad at Alibag, which, indeed, was the Court competent to entertain the bail application

in respect of the offences, which was punishable with imprisonment or life. On the other hand, if the Respondent No.1 was to surrender before the Court of J.M.F.C. at Mahad, that Court could not have granted bail to the Respondent, having regard to the nature of offence for which the Respondent No.1 was being tried being punishable with imprisonment for life. In that sense, the Court of Sessions was the appropriate Court where the Respondent No.1 could have surrendered before inviting the Court to consider his regular bail application."

The learned counsel also relied on the ratio laid down in the case of **Bharat Abhiman Marathe v. State of Maharashtra**, reported in **2007 (5) AIR BOM R 347**, wherein the applicant was charge-sheeted for the offence punishable under Section 409 of the Indian Penal Code. He was not arrested during the investigation. The charge-sheet came to be filed against him. The applicant approached before the Sessions Court for grant of bail on his surrender. The same came to be rejected on the ground that if every such application is to be entertained, then the Sessions Court will be flooded with such matter. On the basis of said fact, the order of Sessions Court was challenged before this court, wherein it was held

that;

"I find that the approach adopted by the learned Ad hoc Additional Sessions Judge was not proper inasmuch as for the offence punishable under Section 409 of the I.P.C., the learned Magistrate could not have granted bail. The applicant was right in approaching the Sessions Court for grant of bail on surrender."

5. As per the above observations, in the present case, applicants shall surrender before the Sessions Court. The Session Court is required to consider the application and pass appropriate order as per law. With this, I pass the following order :

O R D E R

1. Application is allowed.
2. Learned Addl. Session Judge, Bhusawal is directed to consider the application of the applicants to surrender before him and consider their application for bail as per the provisions of law.

3. The applicants are directed to surrender before the Sessions Court, Bhusawal.
4. Application stands disposed of.

(SURENDRA P. TAVADE, J.)

SRM/30/09/21