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IN THE HIGH COURT OF BOMBAY

Criminal Misc. Application (Main) No. 2 of 2021

KISHORE K. KESWANI

APPLICANT

Versus

ANIKSHA JAISINGHANI
AND 2 ORS

RESPONDENTS

Mr. G. Teles, Advocate for the Applicant

Mr. P. Talaulikar, Advocate for the Respondent no.1.

**Mr. Mahesh Amonkar, Additional Public Prosecutor for
the Respondent nos.2 and 3.**

CORAM: MANISH PITALE, J

DATED: 13th October, 2021.

Oral Order:

1. By this application under section 439(2) of Cr.P.C, the applicant claims that the Court of Additional Sessions Judge, Panaji erred in granting anticipatory bail to the respondent no.1.
2. The principal contention raised on behalf of the applicant is that relevant material was not taken into consideration at all and that the order passed by the Court below is in the teeth of the law laid down by the Hon'ble Supreme Court in the case of

Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. State of Maharashtra and anr, 2021 SCC Online 507.

3. On the other hand, Mr. Talaulikar, the learned counsel appearing for the respondent no.1 and Mr. Mahesh Amonkar, the learned Additional Public Prosecutor appearing on behalf of the respondent-State submitted that there was no error on the part of the Court below in granting anticipatory bail to the respondent no.1.

4. The learned counsel appearing for the respondent no.1 brought to the notice of this Court that the said respondent is not named as an accused in the FIR and that the investigation is complete and the investigating authority has not found any material to include the respondent no.1 as an accused to face charges in the present proceedings. The learned Additional Public Prosecutor has informed this Court that there is no material to show that the respondent no.1 is not cooperating with the investigating authority.

5. In the present case, a First Information Report (F.I.R.) dated 12/10/2016, came to be registered at the behest of the applicant. It was the case of the applicant that the accused persons, including the father of the respondent no.1, had created false documents in order to foist a palpably false case of rape against the applicant, in the backdrop of a dispute between the father of the respondent no.1 and the applicant.

6. The police carried out the investigation and charge sheet came to be filed. It is an admitted position that the respondent no.1 is not arrayed as an accused in the said proceedings.

7. Mr. G. Teles, the learned counsel appearing for the applicant relied upon the statement of the accused no.2 recorded under section 164 of the Cr.P.C., wherein certain allegations have been levelled against the respondent no.1. It is contended that although serious allegations were levelled against respondent no.1, she was not added as an accused by the investigating authority. It was further submitted that this material was specifically brought to the notice of the Court below and yet it was brushed aside and anticipatory bail was granted to respondent no.1. By placing reliance on the aforesaid judgment of the Hon'ble Supreme Court, it was contended that the bail granted to the respondent no.1 deserves to be cancelled, as the present case involves a serious offence of making false allegations and fabricating documents. On this basis, it was submitted that the present application deserves to be allowed.

8. This Court has heard Mr. P. Talaulikar, the learned counsel for the respondent no.1 and Mr. Mahesh Amonkar, the learned Public Prosecutor for the Respondent-

9. A perusal of the order passed by the Court below would show that the said Court took into consideration the aforesaid statement of the accused no.2 recorded under section 164 of Cr.P.C and it was observed that the Investigating Officer has not referred to the same in the Say filed before the said Court. Thereafter, the Court below has taken into consideration the fact

that the respondent no.1 is not arrayed as an accused in the F.I.R. which was registered in the year 2016. It is also recorded that the investigating officer has already recorded the statement of the respondent no.1. The Court below has taken note of the fact that there is a civil dispute pending between applicant and the father of the respondent no.1 and that she had referred to certain material indicating that she was not in Goa when the incident took place.

10. The contention raised on behalf of the applicant before this Court is that relevant material was completely ignored by the Court below in passing the order in favour of respondent no.1. This Court has perused the order and it is found that the Court below indeed referred to the relevant circumstances i.e. absence of the name of respondent no.1 as an accused in the F.I.R. and the charge sheet. The existence of a civil dispute between the applicant and the father of the respondent no.1. There is reference made to the statement of the accused no.2 recorded under section 164 of the Cr.P.C., although the Court below has not found sufficient material to hold that the respondent no.1 is not entitled to grant of anticipatory bail. The Court below has also taken note of the fact that the investigating officer has already recorded the statement of the respondent no.1 during the course of investigation.

11. In view of the said position discernible from the contents of the order passed by the Court below, this Court is of the opinion that the law laid down in the case of *Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. Vs. State of Maharashtra (supra)* is not applicable to the facts of the present case. In the

said case, the Hon'ble Supreme Court found that, as a matter of fact, when serious allegations were levelled against the accused, the concerned Court had failed to refer to the relevant material while granting anticipatory bail. There cannot be a quarrel with the proposition laid down in the said judgment that even if the power of granting anticipatory bail is a matter of discretion, such discretion has to be exercised in a reasonable manner and after appreciating the facts and circumstances of the case.

12. In the present case, the Court below has referred to the relevant facts and circumstances, as also the material on record. The view taken by the Court below cannot be said to be erroneous and therefore, no case is made out for exercise of power under section 439(2) of the Cr.P.C. Additionally, it is found that conditions have been imposed on respondent no.1 while granting anticipatory bail. There is no complaint that the respondent no.1 has either not cooperated with the investigating authority or that she has threatened the witnesses or tampered with the evidence. In view of the above, the present application is dismissed.

MANISH PITALE, J.

MARIA
AURA
PEREIRA

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by MARIA AURA
PEREIRA
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