

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 323 OF 2020

Deepak G. Bhatkar

... Applicant

Versus

The State of Maharashtra

... Respondent

.....

Mr. R. V. Gupta, for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st APRIL, 2021.

PC :

1. The applicant had preferred an application for anticipatory bail, vide ABA No. 309 of 2019 before the Court of Sessions, apprehending arrest in connection with C.R. No. 441 of 2018, registered with Wadala T. T. Police Station, Mumbai for the offences punishable under Sections 406, 420, 504, 506 r/w. 34 of IPC.

2. The learned Sessions Judge by order dated 21st February, 2019 allowed the said application on certain terms and condition. The applicant was directed to attend concerned police station at every Saturday between 11 a.m. to 2.00 p.m. and as and when called

for by the police by written intimation to that effect till filing of charge-sheet.

3. Since the applicant had not complied the direction of reporting, the State preferred an application for cancellation of anticipatory bail granted to the applicant under Section 439 (2) of Cr.PC. The said application was allowed by Order dated 20th January, 2020 and the anticipatory bail granted to the applicant by Order dated 21st February, 2019 was cancelled.

4. The applicant is therefore apprehending arrest and approached this Court by preferring present application. The applicant has challenged the Order dated 20th January, 2020 passed by the Learned Sessions Judge cancelling anticipatory bail granted to the applicant.

5. Learned counsel for the applicant submitted that the applicant has not played any role in the transaction. Anticipatory bail was granted to the applicant on merits. The applicant is a permanent resident of Ratnagiri. He is willing to cooperate with the investigation. Only on the ground that the applicant has not attended police station, anticipatory bail granted to the applicant, ought not to

have been cancelled. The applicant has filed affidavit-cum-undertaking before this Court, stating that he is residing at Gurudutta Chawl Committee, Mukti Nagar, Near Nilam Hotel Chembur alongwith his unmarried daughter and younger son. Copy of the sale deed in respect to the premises, executed by the applicant's daughter has been annexed to affidavit. It is also stated that he is permanent resident of Ratnagiri. He was initially residing at Building No.10, Room No. 505, Saidutta Seva Mandal, Pratiksha Nagar, Sion Koliwada, Mumbai. Due to his health issue, he has parted the said premises on rent. In the event of changes in residential address, he would inform the same to the police. The affidavit dated 17th April, 2021 is taken on record. Affidavit of applicant's daughter Sneha Bhatkar is also tendered. In the said affidavit, she has stated that she has purchased the premises jointly with her brother at Gurudutta Chawl, Mukti Nagar, Chembur. The copy of the sale deed, aadhar card, electricity bill and ration card, is annexed to the affidavit. She further stated that her father is residing with her and due to his retirement, he occasionally visits his native place. He would reside with her and in the event he visits his native place and police requires his presence, she would forward intimation about it to him.

6. Learned APP submitted that statements of the neighbours residing in Gurudutta Chawl were recorded by the Investigating Officer on 20th April, 2021. They have stated that the daughter of the applicant frequently visit the said premises. The applicant's daughter has purchased the premises. They have never seen applicant visiting the premises. Learned APP further submitted that the complainant was deceived by the applicant and his son. The applicant had knowledge about the transaction.

7. Learned counsel for the applicant submitted that presently he is at Ratnagiri. His mother and other family members are suffering from covid-19. The applicant is willing to cooperate with the investigation. Although the entire payment was made to the co-accused, the applicant would deposit an amount of Rs.1 Lakh to show his bonafide with the Investigation Officer within six weeks and cooperate with the investigation.

8. It appears that son of the applicant was arrested and he was subsequently released on bail. Charge-sheet has been filed against the arrested accused. On perusal of Order dated 21st February, 2019 granting anticipatory bail to the applicant, it can be seen that the learned Sessions Judge while allowing the said

application, has observed that the transaction was executed with son of the applicant. The allegation against the applicant was that he had asked for deposit from the complainant and assured that the premises will be given on rent to him. Except this no other allegation is against him. It is not the case of the prosecution that the amount was demanded by the applicant or the amount was deposited in the account of the applicant. The amount is shown to have been in the account of the co-accused Rahul Bhatkar. The complainant has forwarded a letter to the Registry. The Letter dated 4th March, 2020 to the Registry, states that action be initiated against the applicant. He was not found at the address given by him. The affidavit tendered by the applicant and his daughter are taken on record.

9. Considering the aforesaid circumstances, the applicant need not be sent to custody. The order cancelling anticipatory bail has to be set aside on certain terms and conditions.

ORDER

- i) The impugned Order dated 20th January, 2020 passed by learned Sessions Judge, cancelling anticipatory bail granted to the applicant, is set aside;

- ii) The Order dated 21st February, 2019 passed by learned Additional Sessions Judge, granting anticipatory bail to the applicant in connection with C.R. No. 441 of 2018 is restored and stands revived;
- iii) The applicant shall deposit an amount of Rs.1 Lakh within a period of six weeks with Investigating Officer;
- iv) The applicant shall attend Investigating Officer on 3rd, 4th and 5th May, 2021 between 11.00 am. to 1.00 pm and thereafter as and when called for;
- v) The applicant shall furnish all the details of his place of residence and telephone number to the Investigating Officer;
- Vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)