

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

ANTICIPATORY BAIL APPLICATION NO.90 OF 2020

Mohammad Hussain Yusuf
Agarbattiwala & Ors. .. Applicants

Vs.

The State Of Maharashtra .. Respondent

**WITH
INTERIM APPLICATION NO.1610 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.90 OF 2020**

Manoj Dattatray Mestri .. Applicant

Vs.

The State Of Maharashtra & Ors. .. Respondents

**WITH
INTERIM APPLICATION NO.507 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.90 OF 2020**

Manoj Dattatray Mestri .. Applicant

IN THE MATTER BETWEEN

Mohammad Hussain Yusuf
Agarbattiwala & Ors. .. Applicants

Vs.

The State Of Maharashtra & Ors. .. Respondents

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Mr.Subhash Jha a/w Mr. Manoj Chauhan i/b. Law Global for
the applicant in ABA.

Mr. Shantanu Phanse, for Applicant in IA No.1610/2021 and
IA/507/2020.

Mr.Anamika Malhotra, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.
DATE : 22nd SEPTEMBER, 2021

PC.

1. The applicants in Anticipatory Bail Application No.90 of 2020 were apprehending arrest in C.R. No.20 of 2019 registered on 14.01.2019 with Nehru Nagar Police Station for the offence punishable under Sections 406, 420, 506 read with 34 of the Indian Penal Code, 1860.

2. The applications came up for hearing before this Court on 14.01.2020. Vide order dated 14.01.2020 it was recorded that the pending application before the Sessions Court, the applicants were granted pre-arrest bail, which order was in force till the rejection of this application. Complainant seeks intervention and time to file reply. Time was granted. Interim relief was granted by this Court with direction to applicant Nos. 3 and 4 to report the Investigating Officer. The application was adjourned to 06.02.2020. Thereafter, the application was adjourned from time to time. The complainant moved Interim Application No.1610 of 2021 for vacating the Ad-interim relief granted by this Court. It was contended by the complainant that the applicants had extended the interim order from time to time. The application was adjourned from time to time at the instance from the applicants.

3. The application for anticipatory bail and interim application were listed before this Court on 03.09.2021. In the order dated 03.09.2021 it was recorded that the learned APP, on instructions, submitted that the applicant reported Investigating Officer once on 17.01.2020 and thereafter though, the applicant was called, there was no reporting. It was further observed that prima facie, the Court was satisfied that the applicant had misused the liberty granted to him. The prosecution was directed to file affidavit with documents to show how the liberty was misused. The application was directed to be listed on 14.09.2021. In compliance with order dated 03.09.2021 affidavit-in-reply was filed by the PSI attached to Nehru Nagar Police Station dated 07.09.2021 giving details about conduct of the applicants with prayer that the interim relief granted by this Court may be vacated. In the said affidavit it was stated that there is apprehension that the applicants may flee away from the country. The directions to attend Investigating Officer were not complied. On 18.01.2020, 21.01.2020, 28.01.2020, 03.02.2020 the Investigating Officer issued notices to the accused to produce the documents instead of attending the police station. The letter was forwarded. The letter dated 01.02.2020 was provided through advocate by the applicant to the Investigating Officer, alleging that Investigating Officer is issuing summons only to put pressure on the applicants and in order to settle the matter with complainant. The letter also states that as the

Investigating Officer is continuously issuing summons and harassing the applicant and that the applicants would file Writ Petition seeking direction to restrain the Investigating Officer from conducting investigation. The affidavit further mentioned that it is evident from the letter that in order to avoid the Investigating Agency, the applicant tried to pressurise the Investigating Officer. By letter dated 15.02.2020 forwarded through advocate, the accused again requested to transfer the investigation of the present case to any other officer, alleging harrasment without justification. The investigation was transferred to the present Investigating Officer as the earlier Investigating Officer was promoted and transferred to another Police Station. The present Investigating Officer issued two notices dated 02.06.2021 and 11.06.2021 and the applicants to produce the document and co-operate with the Investigating Agency. Vide letter dated 05.06.2021 addressed to the Senior Police Inspector, the applicant informed that Criminal Writ Petition No.791 of 2020 is filed by them seeking quashing of the proceedings and they will not be visiting the Police Station for further investigation. The said Writ Petition was filed in February, 2020 and till date no order was passed in the said petition. In the meantime, the accused transferred business and properties in the name of his brother, Sohail Agarbattiwala to avoid attachment of his properties. The proceeding under Section 138 of the Negotiable Instruments Act were initiated against the accused arising out of same

transaction. On 16.01.2021 lookout notice issued against the applicants which was intimated to the Immigration Department IB headquarters, New Delhi. It was further stated that it is clear that the applicant after obtaining ad-interim relief failed and neglected to co-operate with the Investigating Officer inspite of repeated notices issued and disobeying the directions of the Court. The application was never heard on merit. The interim order was extended from time to time. Although, by order dated 18.02.2021 the application was adjourned with observation that as a matter of last chance, it is adjourned to 03.03.2021 and no further adjournment shall be granted. But even thereafter, on 03.03.2021, 09.03.2021, 23.06.2021, 02.07.2021, 04.08.2021 and 03.09.2021 the application was adjourned at the request of the applicants.

4. On 14.09.2021, this application was listed on board, learned APP and learned counsel for the applicants submitted that the interim relief granted to the applicant be vacated. The aforesaid affidavit was relied upon for vacating the interim relief granted by this Court. None appeared for the applicants in Anticipatory Bail Application No.90 of 2020. After referring to the submissions of learned APP and the advocate for the complainant/intervener and affidavit filed by Investigating Officer interim protection granted by this Court was vacated. The submissions of learned APP, advocate for intervener and contents of affidavit filed by prosecution were referred to in the

order dated 14.09.2021. The application was adjourned. On the next day learned counsel for applicant mentioned the matter even after time for mentioning is over and the board had started. He was informed that application was adjourned on previous day after vacating interim order, and it would be listed on 20.09.2021.

5. The application was thereafter listed on 20.09.2021. Learned APP submitted that the applicant No.1 had expired during the pendency of application and applicant Nos.2, 3 and 4 were arrested after the interim order was vacated by this Court. It was submitted that the application has become infructuous. After the order was dictated learned counsel for applicant had appeared and requested that the application may not be disposed of and it may be kept pending as he would like to make submissions and seek some relief. Hence, application was directed to be listed on 22.09.2021.

6. Learned advocate for the applicants Mr. Zha submitted that the application was called out after 04:30 pm. The official time for working of the Court is 10:30 am to 01:30 pm and 02:30 pm to 04:30 pm. The interim relief was vacated in the absence of advocate beyond 04:30 pm. The board was not functional. The junior advocate representing the applicants had mentioned the matter on the same day after board was over and learned counsel for the applicant had mentioned the

matter on the next day. The applicants were arrested after vacating the interim relief and injustice is caused to them. The order was passed around 05:40 pm. is in nullity since it was passed beyond 04.30 pm. He relied upon the Rules of Practice in the Trial of Civil Suits in the Court at Delhi and pointed out chapter 1, Part A, rule 2 which referred to the taking up cases after court hours wherein it is stated that no new case can be taken up after the closing hour of the Court but the hearing of a case taking up before that hour may, if necessary, be continued. It is submitted that the applicant has filed separate application for bail in High Court which application may be heard by this Court. Prejudice has been caused to the accused. The applicant be granted bail by this Court. He tendered unregistered application dated 21.09.2021 wherein it was stated that the applicant had preferred application for regular bail which may be heard by this Court or the anticipatory bail application be converted into bail application with direction to release the applicants on bail forthwith and/or in the alternative the bail application preferred by the applicants in this Court be brought before this Court. It was contended that the order dated 14.09.2021 is an order which could be said to be in nullity as it was passed without hearing the counsel representing the applicants. The interim order was in force in favour of the applicants for long period of time. The order was passed on 14.09.2021 beyond the Court hours. The illegality has to be cured. The Full Bench of this Court had

extended reliefs during lockdown due to pandemic. The order deserves to be recalled. He relied upon the decision in the case of Mahabir Prasad Singh Vs. Jacks Aviation Pvt. Ltd. (1999) 1 SCC 37, Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal & Others. (1980) SCC 420, Shaikh Salim Haji Abdul Khayumsab Vs. Kumar And Others. (2006) 1 SCC 46.

7. Learned APP submitted that the applicants in Anticipatory Bail Application No.90 of 2020 were arrested after the interim relief was vacated by this Court. They were produced before the concerned Court and they were remanded to custody. It is submitted that the application for anticipatory bail was adjourned on several occasions. The affidavit filed by the prosecution mentioned the ground for vacating stay. The complainant had filed application for vacating interim relief. After considering the affidavit filed by the prosecution and hearing the submissions of prosecution and complainant's advocate interim relief was vacated. Learned counsel for the applicant was not present. He cannot make grievance that the application was heard after 04.30 p.m. Learned counsel has been appearing before this Court in several matters beyond court hours and after arguing his applications reliefs were granted in favour of parties to whom he had represented. Now merely because he could not remain present, he cannot

contend that order is in nullity.

8. Learned counsel for the intervener submitted that the interim relief was granted to the applicant on 14.01.2020. It was not granted on merit. Since the applicant was granted interim protection by the Sessions Court, the relief was continued. The application was not heard on merit. Interim order was continued for about 13 months. The Roznama of this Court would indicate that on several occasion, the adjournment was sought by the counsel for the applicant. The interim relief was continued from time to time. This Court on several occasions shown leniency and adjourned application at the request of applicants advocate. This Court has been sitting beyond the Court hours and dealing with the matters relating to the liberty of the accused, who are in custody or who are apprehending arrest since long. Several advocates wait beyond Court hours to argue their matters. When bail can be granted beyond 04.30 pm, in the interest of justice bail can be refused or interim relief can be vacated by the Court beyond 04.30 pm. The advocate appearing for the applicants were aware that Court has been taking of the matters beyond 04.30 pm. The advocate representing the applicant have been appearing regularly before this Court after 04.30 pm. Grievance cannot be made that the Court ought not to have passed the order vacating interim relief. In the present case the application has been adjourned from time to time. Interim relief was

continued. The conduct of the applicants was required to be deprecated. The order cannot be called as nullity. If the order passed granting bail beyond 04.30 pm are valid. The order vacating stay cannot be termed as order in nullity. The unregistered application tendered by learned advocate for applicants should not be entertained. Learned advocate appearing for the applicant has sought adjournments on several occasions on the ground that counsel appearing for the applicants was not available. After the interim relief was vacated, the counsel has now appeared and making the grievance before this Court that the interim relief was vacated after 04.30 pm.

9. The application for anticipatory bail is pending in this Court since January 2020. Interim relief was granted on 14.01.2020, on the basis of the fact that pending application before the Sessions Court the applicant was granted interim relief which was in force till rejection of application. The order would indicate that the applicant Nos.3 and 4 were directed to report before the Investigating Officer on 17.01.2020 and thereafter as and when called. The roznama indicates that on several occasion application was adjourned at the instance of the applicants. On 11.02.2021 the application was adjourned to 18.02.2021 at the request of advocate for applicants. On 18.02.2021 the application was adjourned at the request of advocate for applicants. It was submitted that the arguing

counsel is required to travel. While adjourning the matter, it was recorded that by way of last chance, application is adjourned to 03.03.2021 and no further adjournment will be granted. On 03.03.2021 at the request of advocate for applicants the application was adjourned to 09.03.2021. Thereafter, the application was again adjourned at the request of advocate for the applicants to 24.03.2021. On 04.08.2021 the application was adjourned on the ground that the arguing counsel is not available. It is pertinent to note that on 03.09.2021 the complainant moved application bearing Interim Application No.1610 of 2021 for vacating interim relief granted on 14.01.2020. On 03.09.2021 on instructions learned APP made grievance that applicant has not reported investigating officer after 17.01.2020. The Court had observed in order dated 03.09.2021 that prima facie, court is satisfied that the applicant had misused liberty granted to them. prosecution was directed to file affidavit. On 14.09.2021 as stated above the affidavit was filed by the prosecution in support of vacating the interim relief. The affidavit referred to conduct of accused. After hearing APP and complainants advocate by assigning reasons interim was vacated.

10. The Court is indeed concerned with liberty of individual keeping this in mind, the Court has been sitting beyond the Court hours on several occasions and hearing the applications for bail considering the fact that accused are in custody or

apprehending arrest and their liberty is at stake. In the same way the right of victim/complainant are also required to be protected. The complainant in the present proceeding has been appearing repeatedly through his counsel and opposing adjournment and preferred application for vacating interim relief. It is in this circumstance and considering the fact that the application has been adjourned from time to time at the instance of the applicants and in the light of the contents of affidavit filed by the prosecution, interim relief was vacated. The board was not functioning is disputed question. Learned counsel for the applicant contended that junior advocate had appeared after the entire board was over, which itself indicate that they were aware that the Court is sitting and taking up matters. Merely on the ground that order was passed beyond 04.30 pm, the order vacating relief does not become nullity. Order was passed assigning reasons and it was passed in the interest of justice.

11. The decisions relied upon by the learned counsel for the applicants are in different context and not applicable in the present case. The other contention of the learned counsel for the applicant is that the application be converted into bail application or that the application for bail preferred by the applicant in this Court be heard by this court cannot be accepted. The application for bail if any filed by applicant pertains to assignment of other Court. It is also contended that

since it was mistake of the Court, the order be recalled. The submission is devoid of merits. Learned counsel for the applicant had tendered unregistered application seeking prayers. For reasons stated hereinabove such application cannot be entertained. The application for anticipatory bail has become infructuous. Learned counsel for the applicant then submitted that if the Court disposes of this application it may be observed that the Court hearing application for bail would not be influenced by the order dated 14.09.2021. Now the accused are arrested and they are in custody, it is obvious that the Court hearing bail application would decide it on merits. In view of the arrest of the accused, as stated by learned APP, this application for anticipatory bail has become infructuous. Hence, I pass the following order.

ORDER

- (i) Anticipatory Bail Application No.90 of 2020 has become infructuous and the same is disposed of.
- (ii) Interim Application Nos.1610 of 2021 and 507 of 2020 are also disposed of.
- (iii) If the applicant prefer application for regular bail the said application be decided on merit and in accordance with law without being influenced by order dated 14/09/2021.

(PRAKASH D. NAIK, J.)