

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

ANTICIPATORY BAIL APPLICATION NO. 1172 OF 2021

Kashiff Hashim Khan Malik ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. P. R. Dave, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th MAY, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. 168 of 2016 registered with Borivali Police Station, Mumbai for offences under Sections 3, 4, 5, 7 & 8 of the Immoral Traffic (Prevention) Act, 1956 (for short 'PITA Act'). At the time of filing of charge-sheet, Section 370 (1) of Indian Penal Code (for short "IPC") has been added.

2. The applicant had preferred application for anticipatory bail before this Court viz. Anticipatory Bail Application No. 648 of 2016. Interim protection was granted on 15th April, 2016. On 9th December, 2016 this Court passed an order that the matter was adjourned from time to time at the request of the applicants. On

previous date, the matter was adjourned at the behest of the applicants and they were put to notice by speaking order that the matter will be heard on 9th December, 2016. However, the applicants are seeking time. This Hon'ble Court vacated the interim protection granted to the applicant. Subsequently, the application was withdrawn by the learned advocate and the same was dismissed as withdrawn vide order dated 10th April, 2017. From the aforesaid order it is apparent that the interim order was vacated on 9th December, 2016 and subsequently, the application was withdrawn.

3. The contention of the applicant is that the applicant was not aware about the order passed by this Court. There was no communication with advocate representing him. Interim order granted by this Court was executed and the charge-sheet was filed against the applicant. The applicant has now realized that the application was withdrawn. At the time of filing of charge-sheet Section 370 (1) of IPC was invoked. There is change in circumstance.

4. Learned APP submitted that the offence is of serious nature. Notice of filing charge-sheet was given to the applicant. He did not remain present before trial Court. Section 370 of IPC has been invoked subsequently at the time of filing of charge-sheet. . He cannot approach this Court after a period of 4 years. He should

appear before the Court of learned Magistrate and apply for bail. Learned counsel for the applicant submitted that since Section 370 of IPC was invoked, the trial Court would remand applicant to custody.

5. It is apparent that, the interim protection was granted to the applicant on 15th April, 2016. The application was thereafter, adjourned on several occasions. Applicant was put to notice that the application would be heard on 9th December, 2016. The applicant again contends that he was aware about the said order. It is pertinent to note that vide order dated 10th April, 2017, the application for anticipatory bail was allowed to be withdrawn and disposed of. After a period of 4 years, now the applicant has preferred this application for anticipatory bail in respect to the same FIR. The situation was warranted by the applicant. He waited for 4 years. The contention that this application be entertained in view of Section 370 of IPC being invoked cannot be accepted.

ORDER

Anticipatory Bail Application No. 1172 of 2021 is rejected.

(PRAKASH D. NAIK, J.)