

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1289 OF 2019

Kunal Vikram Sawant & Anr.

... Applicants

V/s.

The State of Maharashtra

... Respondent

Mr. Aabad Ponda, Senior Advocate a/w Mr. Samsheer Gaud, Mr. Santosh Avhad, Ms. Juhi Valia i/b. Jayakar And Partners for Applicants.

Mr. Y. M. Nakhawa, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 4th September 2021.

PC. :

1. Heard Mr. Ponda, Senior Advocate for the Applicants and Mr. Nakhawa, learned APP for State. Perused record.

By an Order dated 18th June 2019 the Applicants were granted interim relief.

2. Record indicates that, the Respondent No.2 had filed a private complaint bearing Cr. M.A. No.4459 of 2018 before the learned 15th Judicial Magistrate First Class, Pune, for direction to pass an Order under Section 156(3) of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for an alleged offence as contemplated under Sections 420, 467, 468, 452, 120(b), 166, 167 read with 34 of the Indian Penal Code. Applicants are accused Nos.6 and 7 respectively in the said complaint. Learned Magistrate

by its Order dated 24th October 2018 was pleased to reject the prayer for investigation under Section 156(3) of the Cr.P.C. and had directed to fix the said complaint for recording the verification of the said complainant. In para 6 of the said order dated 24th October 2018, learned Magistrate has observed that, the dispute between complainant and the accused therein is of civil nature. Complainant's case is based on documentary evidence. The copies of relevant documents are filed on record. That, merely the cognizable offence is made out cannot be a sole ground to give direction under Section 156(3) of the Cr.P.C. in each and every cases. That, there is no sufficient ground to direct the police authority for investigation under Section 156(3) of the Cr.P.C.

3. Feeling aggrieved by the said Order dated 24th October 2018, rejecting the prayer of complainant to direct the investigation under Section 156(3) of the Cr.P.C., the complainant preferred Criminal Revision Application No.622 of 2018, before the learned Additional Sessions Judge, Pune. The Revisional Court by its Judgment and Order dated 8th May 2019, has partly allowed the said Revision Application by setting aside the Order dated 24th October 2018, passed below Exh. 1 in Criminal M.A. No.4459 of 2018 and has specifically directed that, the complaint against Accused Nos.1 to 5, 15 and 16, be sent to Khadak Police Station for investigation under Section 156(3) of the Cr.P.C.. The Revisional Court in para No.4 of operative part of its Order has categorically held that, the complaint against accused Nos.6 to 14 and 17

to 25 is dismissed under Section 203 of the Cr.P.C. with liberty to join them as an accused if during investigation the Investigating Officer finds sufficient grounds for proceeding against them.

4. The record indicates that, the said Order holds field as of today and is not altered or modified by higher Court. It is now the case of the prosecution that, during the course of investigation, the co-accused have named the Applicants thereby revealing their complicity in the present offence and therefore their custody is necessary. It is to be noted here that, once the complaint against the accused persons is dismissed, as contemplated under Section 203 of the Cr.P.C., the accused stands discharged from the said complaint and then there is no question of proceeding against the accused persons without following the procedure as contemplated under the Cr.P.C.

It appears that, the Investigating Officer till date has not filed an application, seeking permission of the Revisional Court for custodial interrogation of the Applicants. It is the settled position in law that, the effect of dismissal of a complaint is termination of proceedings against the accused person therein and without following necessary procedure prescribed under the Cr.P.C., the accused persons cannot be interrogated thereafter, without prior sanction of the Court.

5. The aforestated deliberation leads to draw a conclusion that, the investigation agency is seeking custody of the Applicants without following

the necessary procedure under the law.

In view thereof, the question of custodial interrogation of the Applicants at this stage does not arise. Interim relief granted by Order dated 18th June 2019 is hereby confirmed. However, the condition to attend the concerned Police Station is waived.

6. Anticipatory Bail Application is accordingly allowed.

[A.S. GADKARI, J.]

**TAUSEEF
LAIQUEE
FAROOQUI**

Digitally signed by
TAUSEEF LAIQUEE
FAROOQUI
Date: 2021.09.14
10:46:05 +0530