

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

ANTICIPATORY BAIL APPLICATION NO. 2003 OF 2021

Nasreen Begum Shaikh w/o.

Abdul Nisar Shaikh

..Applicant

Versus

State of Maharashtra

..Respondent

Mr. Niranjan Mundargi i/b. Mr. Vikas K. Singh for Applicant.
Ms. Veera Shinde, APP for Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31th AUGUST 2021.

PC :

1. This is a second attempt of the same applicant to approach this court for anticipatory bail in connection with C.R.No. 350 of 2021 registered with Nirmal Nagar police station for the offences punishable under sections 304(II), 336, 337 and 338 r/w. 34 of the I.P.C.

2. On the earlier occasion, the applicant had approached this court vide A.B.A.No.1636 of 2021. At that time, following order was passed on 16/07/2021.

“After arguing for some time, when I expressed my disinclination to grant relief in this Application, learned Counsel for the Applicant prays for unconditional withdrawal of this Application.

Permission is granted. The Application is allowed to be withdrawn unconditionally and is disposed of accordingly.”

3. Subsequent to that, the charge-sheet came to be filed against the co-accused. The applicant was directed to remain present before the Magistrate by the Investigating Officer. In the charge-sheet, it was mentioned by the I.O. that the applicant was 66 years of age. She was suffering from various ailments like slip disc, high diabetes and heart related disease. Since she was an old lady she was not arrested. The I.O. gave a notice to the applicant under section 41(1)(a) of the Cr.p.c. to remain present before the learned Metropolitan Magistrate, 32nd Court, Bandra (E), on 10/08/2021. However, the applicant did not remain present before the Magistrate on 10/08/2021 when she was directed to appear before that court. The I.O. has mentioned in the charge-sheet that, they were making provision to arrest the applicant in future and to file a supplementary charge-sheet before the learned Magistrate.

4. Today, Shri. Niranjana Mundargi, learned counsel for the applicant submitted that the investigating agency did not want to arrest her and yet she had an apprehension that, if she appeared before the Magistrate, she would be arrested and she would not be granted bail, because the allegations are of commission of offence punishable under section 304(II) of I.P.C. He submitted that the Hon'ble Supreme Court in the case of *Siddharth Vs. The State of Uttar Pradesh & Anr. in Criminal Appeal No. 838 of 2021*, has observed that, in every case the arrest is not compulsory and where the investigating agency does not choose to arrest the accused, there is no reason why the accused must be arrested when the charge-sheet is taken on record.

5. I have considered the submissions made by Shri. Niranjana Mundargi today. It is made clear that, Shri. Niranjana Mundargi has not advanced any argument on merits of the case today. Since the merits of the matter were not touched upon, earlier order passed by this court stands on merits as the matter was fully argued. Only after the court showed disinclination to grant relief of anticipatory bail, that application was withdrawn unconditionally. Sanctity of

the statement made in the court and of the order passed by the court must be maintained. So far as the apprehension expressed by the learned counsel for the applicant is concerned, that can be taken care of; if the learned Magistrate is directed to take into consideration the ratio laid down by the Hon'ble Supreme court in the case of ***Siddharth (supra)***. It is the duty of the Magistrate to follow this ratio. Shri. Mundargi is agreeable to this course of action. Therefore, no further order is necessary in this application.

6. The applicant can approach the court of Magistrate with the proposition laid down in the case of ***Siddharth (supra)***. The Magistrate shall take into account the fact that the investigating agency did not choose to arrest the applicant.

7. In view of these observations, learned counsel for the applicant has not pressed for the relief of anticipatory bail in this application.

8. The application is disposed of.

(SARANG V. KOTWAL, J.)