

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

ANTICIPATORY BAIL APPLICATION NO.1968 OF 2021

Manish Tripathi

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2000 OF 2021

Anurag Tripathi

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

...

Mr.Ghanshayam Upadhyay i/b Law Juris for applicants.

Mr.S.R. Agarkar, A.P.P. for the State-Respondent.

Mr. R.H. Khot, Samatanagar Police Station, present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 15th SEPTEMBER, 2021

PC.

1. In both the applications preferred under Section 438 of Cr.P.C., the applicants are apprehending arrest in connection with First Information Reports (for short "FIR") registered with different police stations which are mentioned in the prayer clause of respective applications. Learned APP submitted that the applications relating to some of the FIRs are infructuous since the applicants are arrested in some of the FIRs.

2. The common question involved in both the applications is that the applicants have preferred composite application before this Court seeking relief in different FIRs registered with different police stations. The applicants preferred these applications directly before this Court without exhausting relief under Section 438 of Cr.P.C. before respective Sessions Court.

3. Learned counsel for the applicants Mr. Upadhyay urged that the applicants are arrested and they were in custody in another FIR. The custody has been sought in different FIRs. The FIRs are registered with different police stations and hence the applicants have approached directly to this Court without moving application before the Sessions Court. The other contention of the learned counsel for the applicants is that in relation to same transaction and same offence multiple FIRs were registered with different police stations, which is not permissible in law. It is submitted that the applicants are repeatedly arrested in different cases. The factual aspects of present applications will have to be considered as special circumstances to entertain the application directly before this Court. He relied upon the decision of the Allahabad High Court in the case of Vinod Kumar Vs. State of Uttar Pradesh and Ors. 2020 (2) ACR 1562 and the order passed by this Court in Criminal Application No.1158 of 2006 dated 21.03.2006.

4. In support of submission about maintainability of multiple FIRs, learned advocate relied upon the following decisions: -

- (1) Arnab Ranjan Goswami Vs. Union of India (UOI) and Ors. AIR (2020) SC 2386.
- (2) Amitbhai Anilchandra Shah Vs. CBI AIR (2013) SC 3794.
- (3) T.T. Anthony Vs. State of Kerala and Ors. AIR (2001) SC 2637.
- (4) Babubhai & Others Vs. State of Gujrat & Ors. delivered in Criminal Appeal No.1600-1605 of 2010 reported CDJ 2010 SC 746.
- (5) Andra Pradesh Vs. Cheemalapati Ganeswara Rao and Ors. AIR (1963) SC 1850.
- (6) Arnab Manoranjan Goswami Vs. The State of Maharashtra & Ors. dated 27.11.2020 delivered in Criminal Appeal No.742 of 2020.
- (7) Order dated 10.12.2018 passed by this Court in Criminal Bail Application No.3062 of 2018.

5. The Allahabad High Court in the decision of Vinod Kumar (Supra) relied upon by learned counsel for the applicant has dealt with the issue relating to the nature of the concurrent jurisdiction conferred by Section 438 of Cr.P.C. and whether the parties should necessarily approach the Sessions Court first before invoking the jurisdiction of High Court under Section 438 of Cr.P.C. In what circumstances can the High Court be approached directly under Section 438 of Cr.P.C. In paragraph 34 of the said decision the Court has observed that section 438 of Cr.P.C. on its own does not mandate or require a party to first approach the Sessions Court before applying to the High Court

for grant of anticipatory bail. The provision as it stands does not require an individual first being relegated to the Court of Sessions before being granted the right of audience before High Court. To adjudicate the issue in what circumstances can the High Court be approached directly under Section 438 of Cr.P.C., the Court referred to decisions of the same Court in the case of Harendra Singh Vs. State of U.P. 2019 SCC OnLine All 4571 and the decision of the Full Bench in Onkar Nath Agarwal Vs. State 1976 Cri.L.J. 1142. The Court observed that the reasons assigned by the Court in Harendra Singh's case are not only convincing and compelling, but also clearly appear to be expedient and prudent. The legislature in its wisdom conferred concurrent jurisdiction on the Court of Sessions perhaps bearing those very reasons in mind. The constraints of access to justice, of distances, the expense of litigation are all relevant factors which appear to have guided the Legislature in clothing the Court of Sessions with contemporaneous jurisdiction. All that was intended was to put in place a rule of abstinence and require the individual to establish the existence of special and compelling circumstances constraining him to move the High Court in the first instance. Although it is conclusively held that while there exists no fetter or restriction upon the High court entertaining an application under Section 438 of Cr.P.C. directly it would ultimately depend upon the discretion of the Judge available to be exercised in the facts and circumstances of each case and upon finding special circumstances which warrant

High Court to invoke its jurisdiction in the first instance rather than relegating the party to the Court of Sessions. The Court further referred to exceptional or Special circumstances to entertain the application directly. The Court made reference to the case of Harendra Singh and observed that the holistic reading of that decision is the intent of the learned Judge to convey the duty of the applicant approaching the High Court to establish the existence of exceptional and special circumstances. The words “exceptional” or “extraordinary” are understood to mean atypical, rare, out of the ordinary, unusual or uncommon. In paragraphs 40, 41 and 42 of the said decision in the case of Vinod Kumar (*supra*) it is observed that strong, cogent, compelling reasons and special circumstances must necessarily be found to exist in justification of the High Court being approached first and without the avenue as available before the Court of Sessions being exhausted. Whether those factors are established or found to exist in the facts or a particular case must necessarily be left for the Court to consider in each case. What would constitute "special circumstances" in light of the nature of the power conferred, must also be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would perhaps be imprudent to exhaustively chronicle what would be special circumstances. It would be impossible to either identify or compendiously propound what would constitute special circumstances.

6. Learned counsel for the applicants relied upon the interim order dated 21.03.2006 passed by this Court in Criminal Application No.1158 of 2006m wherein the application was entertained directly to the High Court and interim relief was granted.

7. This Court in the case of Mohanlal s/o Nandram Choudhari Vs. State of Maharashtra 2007 (4) Mh.L.J. 9 had occasion to deal with similar issue. Reference was made to the decision of Full Bench of the Allahabad High Court in the case of Onkar Nath Agarwal and the Division Bench of the Andhra Pradesh High Court in Y. Chandrashekhhar Rao case and various other decisions. In paragraph 29 of said decision, learned Judge has observed that view expressed by the High Court of Allahabad in Onkar Nath's case as well as Division Benches of Andhra Pradesh High Court and Kerala High Court holding that it is the choice of an applicant either to approach the Sessions Court or the High Court to seek relief under Section 438 of Cr.P.C. directly cannot be accepted. There is no reason to depart from the practice which has been consistently followed by this Court. Though it cannot be disputed that the application directly filed before the High Court under section 438 of Cr.P.C. is maintainable, while exercising jurisdiction under Section 438 of Cr.P.C. the High Court would be fully justified in insisting upon exceptional reason before dealing with an application filed

directly to the High Court seeking Anticipatory Bail on merits. This Court has consistently followed practice of insisting that the applicant must first approach sessions Court before approaching the High Court. The application for anticipatory bail filed directly to the High Court is maintainable, but the High Court would be justified in not entertaining the same on merit unless exceptional reasons existing.

8. Thus, it is not necessary that this Court must entertain application for anticipatory bail directly unless exceptional case is made out.

9. The applicants are involved in the offence punishable under Sections 420, 188, 120-B of IPC and Section 18(A), (B), 24, 27, 28, 28(A) of Drugs and Cosmetics Act and Section 52 of Disaster Management Act. The applicants are in custody in the FIR in which they are arrested. The cases relate to administering the adulterated vaccine to control Covid-19 to various person by administering adulterated vaccine by representing as Covishield vaccine. The offences were committed at different places and separate FIRs were registered. In both the applications combined relief is sought in respect of several FIRs registered at different police stations. Learned APP submitted that since the applicant is in custody in another case, transfer of custody is already sought and in most of the cases the applicants are arrested. I do not find that any exception is made out to entertain these applications directly before this Court. Since

the applications are not entertained by this Court it is not necessary to adjudicate the issue about the registration of multiple FIRs. Hence, I pass the following order: -

ORDER

- (i) Both the applications are rejected and disposed of;
- (ii) The applicants are at liberty to file application before concerned Sessions Court under Section 438 of Code of Criminal Procedure in respect to the First Information Reports in which they are yet to be arrested, which will be decided on its own merits.

(PRAKASH D. NAIK, J.)