

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2512 OF 2021

SANJAY MISHRIMAL PUNAMIYA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Niteen Pradhan a/w. Mr.Dilip Shukla, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

DATE : 22nd OCTOBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure apprehending arrest under Section 420, 465, 468, 471 of Indian Penal Code (IPC) and Section 82 of the Indian Registration Act registered vide Crime No.1137 of 2021 with Police Station Sinnar.

2 I have gone through the contents of the First Information Report (FIR) in question. It may not be out of place to note that FIR No.I-184/2016 on 26th September 2016 with Police Station Sinnar for the same set of allegations was filed by Shamsunder Radhesham Agarwal. However, after investigation, the said Police Station filed “B” Summary Report on 17th November 2016. It does appear from the record that the present applicant then approached this Court for quashing of said FIR I-184/2016 on the ground of settlement of dispute between the parties and this Court was pleased to quash the said FIR on 19th July 2017 (Exh. G).

3 According to the applicant, despite quashing of earlier FIR an offence vide Crime No.176/2021 came to be registered with Kopari Police Station. The applicant then approached the learned Additional District Judge-4, Thane, and the learned Additional District Judge-4, Thane, was pleased to allow the anticipatory bail application on 29th September 2021. The said order is at Exh. H.

4 It seems that the matter did not stop there and despite being the above situation, another FIR No.299/2021 by Police Station Marine Drive and another Crime bearing No.1137/2021 with Police Station Sinnar, which is subject matter of present proceedings came to be launched and registered.

5 Heard Mr.Niteen Pradhan, learned counsel for the applicant and Smt.Anamika Malhotra, learned APP for the Respondent-State. The learned counsel submits that the learned trial Court wrongly rejected the prayer of ad-interim relief sought by the applicant and posted the matter for hearing ignoring the provisions of Section 438 of the Code of Criminal Procedure. The impugned order is unlawful, illegal and suffers from non-application of mind and therefore needs to be set aside. According to the learned counsel now the matter is posted for hearing on 27th October 2021 and having regard to the nature of accusations, in the meantime not only the learned trial Court be directed to decide the application expeditiously but at the same time liberty of applicant be protected till the decision of the

anticipatory bail application pending before the learned trial Court.

6 The learned APP, on her part, fairly concedes that while passing the impugned order the learned trial Court ought to have kept in mind the object and spirit of Section 438 of the Cr.P.C. According to the learned APP appropriate order in the circumstances may be passed.

7 I have also gone through the order passed below Exh. 4 in Criminal Bail Application No.1428 of 2021 moved by the applicant herein before the learned trial Court seeking ad-interim relief in C.R.No.1137 of 2021. Needless to note that the ad-interim relief was rejected vide order dated 13th October 2021 (Exh. A-2) while issuing show cause notice to the Senior Police Inspector, Sinnar Police Station and the Superintendent of the Police, Nashik calling upon them to show cause as to why pre-arrest bail should not be granted in favour of the applicant. Thus, in a sense, the learned trial Court kept the application very

much pending with show cause notice returnable on 21st October 2021.

8 I need not emphasize that the law relating to grant of anticipatory bail is very much clear in view of the Maharashtra Amendment of Section 438 Cr.PC. Relevant portion of the provision for our purposes is quoted hereunder :

“438. Direction for grant of bail to person apprehending arrest. -(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail and that Court may, after taking into consideration, *inter alia*, the following factors:-

(i) the nature and gravity or seriousness of the accusation as apprehended by the applicant;

- (ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;
- (iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and
- (iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court, or as the case may be, the Court of Sessions, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.”

9 It is quite clear that the Maharashtra Amendment very specifically states that the Court of Sessions may either reject the application forthwith or issue an interim order for grant of anticipatory bail. This is further supplemented by the proviso appended to sub-section (1) of Section 438 which makes it abundantly clear that it is only in the event of this Court or the Court of Sessions not passing an interim order under this sub-section or rejecting the application for grant of anticipatory bail that it is open to the Investigating Officer to arrest without warrant the applicant on the basis of accusation apprehended in the application.

10 Incidentally, I may point out that this Court had an occasion to consider the issues as to whether by keeping pending the anticipatory bail application, ad-interim relief can be rejected on merits in various matters including the matter of Maharashtra vs. Kachrusingh Rajput (1994) 3 BCR 348 and Criminal Application No.7473 of 2005 Vikram Janakraj Ahuja vs. State as well as in the matter of Shrenik Jayantibhai Jain and another vs.

State of Maharashtra (Anticipatory Bail Application No.541 of 2014).

11 In the light of law laid down in the aforesaid cases and considering the object and spirit of Section 438 Cr.P.C. to protect liberty of an individual pending consideration of the anticipatory bail application on merits, the learned Additional Sessions Judge Nashik should have either passed interim order granting protection or rejected the application itself rather than rejecting the ad-interim relief and ventured to issue notice to the concerned Police Officer.

12 In the circumstances, I deem it just and proper to direct the learned Additional Sessions Judge, Nashik to hear and finally dispose of the anticipatory bail application for grant of anticipatory bail within a period of four weeks from the date of receipt of this order.

13 In the meanwhile, no coercive action shall be taken against the applicant pending decision of the anticipatory bail by the learned Additional Sessions Judge, Nashik.

14 It is further made clear that if any adverse order is passed against the applicant then the interim protection so granted by this Court shall be continued for a further period of one week thereafter i.e. from the date of passing of the adverse order so as to enable the applicant to approach the higher Court.

15 The application accordingly stands disposed of.

(V. G. BISHT, J.)

ARTI VILAS
KHATATE

Digitally signed by
ARTI VILAS
KHATATE
Date: 2021.10.22
13:06:20 +0530