

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

ANTICIPATORY BAIL APPLICATION NO.2830 OF 2021

Bapurao Eknath Jawal Applicant
versus
State of Maharashtra Respondent

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- Mr.Rajaram Bansode i/b. Kiran A. Nikam, Advocate for Applicant.
- Mrs.Veera Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 02nd DECEMBER, 2021

P.C. :

1. This is the second bail application preferred by the same Applicant. On the earlier occasion, he had approached this Court by way of Anticipatory Bail Application No.2790 of 2019. The said application was decided vide order dated 24/09/2021. Following order was passed -"

"1. After arguing for some time, when I expressed my disinclination to grant relief, learned counsel for the Applicant prays for unconditional withdrawal of this application.

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2. Permission granted. Application is allowed to be withdrawn unconditionally and is disposed of as such.

3. Interim order granted earlier, stands vacated.”

2. In spite of this order, this second bail application was preferred by the same Applicant. When specifically asked regarding change of circumstance, the learned counsel for the Applicant submitted that at the time of hearing of the earlier Anticipatory Bail Application No.2790 of 2019, which was decided on 24/09/2021, the charge-sheet was already filed, but it was not brought to the notice of the Court. He submitted that this amounts to change in circumstance, due to which the present application would be maintainable. He further submitted that in another matter where the husband of the prosecutrix was an informant regarding different incident, of alleged abduction of the prosecutrix the police have filed ‘A’ summary which is a relevant circumstance.

3. I have considered these submissions. None of these submission appeal to me. As far as 'A' summary is concerned, it was in respect of a separate incident, where the husband of the prosecutrix has lodged FIR that has nothing to do with the subject matter of this application. That report is dated 16/07/2021 i.e. prior to the order dated 24/09/2021. The report shows that the prosecutrix in the present case could not be contacted for investigation of that offence.
4. As far as not annexing the charge-sheet in the earlier application is concerned, this amounts to suppression of fact. It was the duty of the Applicant to bring it to the notice of the Court. The charge-sheet was already filed on 22/12/2020. Therefore this is not a change in circumstance in favour of the Applicant, after the order dated 24/09/2021 was passed in Anticipatory Bail Application No.2790 of 2019.
5. At the time of decision of Anticipatory Bail Application No.2790 of 2019, the statement of the prosecutrix was considered as it was annexed to that application. Even today I

have perused that statement. It clearly makes out a case of offence punishable u/s 376, 323, 506 of the IPC. Today I have also perused the charge-sheet.

6. The incident is described and details regarding involvement of the Applicant are very clear from the perusal of that statement. The charge-sheet annexed to this particular application contains statements of certain witnesses, who have spoken about earlier quarrel between the prosecutrix and another person. Those witnesses are not material witnesses, as far as the main incident of rape is concerned. The incident of rape had taken place on 30/09/2019 and the FIR was lodged on 08/11/2019. According to learned counsel for the Applicant, there is delay in lodging FIR. The delay if any in lodging the FIR is the matter of trial and certainly cannot be the ground for grant of anticipatory bail to the present Applicant. She has stated in the FIR that due to fear, she has not lodged the FIR immediately. The medical opinion in column No.23 mentions that possibility of rape cannot be ruled out.

7. The incident had taken place two years ago. Since then the Applicant was not arrested. In spite of rejection of his anticipatory bail application by this Court on 24/09/2021, the Applicant has neither surrendered nor was arrested by the police. In fact the Applicant had thereafter approached the Sessions Court for anticipatory bail vide Ex.3 in Sessions Case No.7 of 2021. The conduct of the Applicant shows that he is not only evading arrest, but is hampering proper investigating of the matter. Therefore the Applicant does not deserve any order in his favour in the nature of anticipatory bail. It is important to note that the Applicant's earlier application was withdrawn unconditionally. Therefore in any case there is no reason to entertain this application. However in the interest of justice I have perused the charge-sheet and the statement of the prosecutrix. I see no reason to take a different view and grant anticipatory bail to the Applicant.

8. Therefore I am inclined to reject this application. I have also heard learned counsel on the point of awarding cost considering conduct of the Applicant. As pointed out earlier, the

incident is dated 30/09/2019. The application was allowed to be withdrawn by this Court on 24/09/2021, even thereafter he approached the Sessions Court for the same relief. The charge-sheet which was filed in December 2020 was not brought to the notice of the Court on 24/09/2021. The application was allowed to be withdrawn. The Applicant's conduct amounts to abuse of process of law. Considering all these facts, it is necessary to impose cost on the Applicant.

ORDER

- (i) Application is rejected.
- (ii) The Applicant is directed to pay cost of Rs.10,000/- (Rupees Ten Thousand Only) in the trial Court within a period of four weeks from today. If the cost is not deposited within the stipulated period, then the trial Court shall take proper steps in that behalf.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)