

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.603 OF 2020

Smt. Kamalabai Zabbulal Yadav,
Aged about 60 years,
Occupation: Housewife,
R/o 61, Lokvihar Park, Bhilgaon,
Tah., Kamptee, Dist. Nagpur. **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Through its Principal Secretary,
Law and Judiciary, Maharashtra State,
Mantralaya, Mumbai-32.
2. Dilip Visumal Aswani,
Aged about 50 Years,
Occupation: Business.
3. Bhavesh Tulshidas Aswani,
Aged about 30 Years,
Occupation: Business.

R/o Respondents 2 and 3: Plot 9,
Chhapru Nagar Road,
Chapru Nagar Chowk, Nagpur.

4. Umashankar Ramkisan Marothe,
Age 51 Years, Occ- Not Known,
R/o Hiwari Nagar, Near Tower Line,
Nagpur. **RESPONDENTS**

Mr. Y.Y. Humne, Advocate for Petitioner.
Mr. M.K. Pathan, APP for Respondent 1/State.
Mr. N.B. Bargat, Advocate for Respondents 2 to 4.

CORAM: **ROHIT B. DEO, J.**
DATE: **19th JANUARY, 2021.**

ORAL JUDGMENT:

With consent the petition is finally heard at the admission stage.

2. The petitioner is aggrieved by the order dated 27.10.2020 rendered by the learned Additional Sessions Judge-9, Nagpur in Miscellaneous Criminal Application 2697/2020, whereby the application invoking the power under section 439 (2) of the Code of Criminal Procedure (Code) seeking cancellation of ad-interim anticipatory bail granted to respondents 2, 3 and 4 herein, is rejected.

3. In view of the order which I propose to make, it would not be necessary to narrate the chequered history, in detail. Only facts which are absolutely essential, need be stated.

4. The petitioner approached the learned Magistrate under section 156(3) of the Code and in pursuance of a direction to investigate issued by the learned Magistrate F.I.R. 410/2020 under sections 207, 208, 209, 420, 468, 471 and 120-B of the Indian Penal Code came to be registered against respondents 2 to 4.

5. The respondents 2 to 4 preferred an application seeking pre-arrest protection under section 438 of the Code.

6. The learned Sessions Judge granted ad-interim pre-arrest protection.

7. The petitioner preferred Miscellaneous Criminal Application 2695/2020 seeking cancellation of the ad-interim pre-arrest protection. The gist of the application is that the petitioner – informant was threatened of physical harm, which incident was duly reported to the police and F.I.R. 530/2020 under section 506 of the IPC, registered. It is further alleged that the material witness Aasit Lihitkar was threatened and pressurized to withdraw his statement and that the said witness has also reported the threats to the Mauda Police Station. It is further alleged that the son of the applicant received a call from an unidentified woman on 06.10.2020 and the petitioner apprehends that his son may be falsely implicated in a fake case. Such are primarily the allegation on the basis of which the cancellation of ad-interim pre-arrest protection is sought.

8. The learned Sessions Judge noted that the ad-interim pre-arrest protection is not confirmed. The learned Sessions Judge

further observed that the alleged misuse of liberty can be brought to the notice of the Court during the hearing on confirmation of the ad-interim pre-arrest protection and that the said aspect shall be duly considered.

9. In my considered view, the order impugned warrants no interference, save and except that the costs of Rs.5000/- which is imposed needs to be set aside. The learned Sessions Judge observes that not only are the applications seeking cancellation of ad-interim pre-arrest protection are filed, the applications are strongly supported by relying on as many as ten judgments of the Supreme Court and the High Courts. The learned Sessions Judge further notes that the judgments on which reliance is placed are not relevant. The learned Sessions Judge, therefore records a finding that the process of law is abused and saddled costs.

10. The anxiety and expectation of the learned Sessions Judge that the judicial time ideally ought not to be wasted by citing irrelevant decisions, is understandable. However, the ground reality can hardly be ignored. Day in and day out, in matters after matters, decisions which are not relevant are cited, before this Court. It is unnecessary to delve in the reasons. However, the Court is expected to be some what liberal and

charitable and it may not be appropriate to impose costs only on the ground that irrelevant decisions are cited in support of an application.

11. The petition is partly allowed.

12. The order directing payment of costs is set aside.

13. The rest of the order is confirmed.

14. It is made abundantly clear that the allegations levelled in support of the applications seeking cancellation of ad-interim pre-arrest protection shall be duly considered on merits, by the learned Sessions Judge, while deciding the pending pre-arrest protection applications, without being influenced by any observation either in the order impugned or in this judgment.

15. Rules is made absolute in the afore-stated terms.

JUDGE