

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

CRIMINAL WRIT PETITION NO.635/2020

Mangesh Gunvantrao Pandey and others
..Vs..
State of Maharashtra, through Police Station Officer, Police Station
Avdhootwadi, Yavatmal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sirpurkar, Advocate for the petitioners.
Shri N.R. Patil, Additional Public Prosecutor for the respondent.

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATED :- 11.3.2021.

1. After hearing this petition at length, learned counsel for the petitioners, on instructions, seeks leave of the Court to withdraw the petition but, he prays for extension of the interim order passed in favour of petitioner No.5 on 14th December, 2020.

2. Learned Additional Public Prosecutor has no objection to grant leave to withdraw the petition but, he strongly opposes prayer for extension of interim order dated 14th December, 2020 contending that such extension would amount to grant of anticipatory bail in different words.

3. Leave to withdraw the petition is granted. Now,

the question is about extension of interim relief granted to petitioner No.5 who is accused in this case in order to enable him to take recourse to appropriate remedy available for seeking bail. In the case of *State of Telangana V/s. Habib Abdullah Jeelani and others* reported in **(2017) 2 SCC 779** the Apex Court has observed that any order which would amount to indirectly granting relief of anticipatory bail should not be passed. It is observed that the direction passed for prohibiting the investigating agency from arresting accused persons would amount to an order under Section 438 of the Code of Criminal Procedure and that too without satisfaction of the conditions of the provision, is legally unacceptable. The relevant observations appearing in paragraph 16 are reproduced as under:-

“16. In the instant case, the High Court has not referred to allegations made in the FIR or what has come out in the investigation. It has noted and correctly that the investigation is in progress and it is not appropriate to stay the investigation of the case. It has disposed of the application under Section 482 CrPC and while doing that it has directed that the investigating agency shall not arrest the accused persons. This direction “amounts” to an order under Section 438 CrPC, albeit without satisfaction of the conditions of the said provision. This is legally unacceptable.”

4. So, this would be a case wherein it would not be appropriate for this Court, in the ordinary course of

circumstances, to extend the interim order passed on 14th December, 2020 and to this extent, objection taken by the learned Additional Public Prosecutor appears to be having substance in it. But, the question is whether this would be a special case wherein an exception could be made to the law generally laid down by the Apex Court regarding restraint to be observed by the High Court in issuing a direction to the investigating agency to not to arrest the accused persons.

5. According to us, this is a special case for the reason that law so declared by Apex Court was not brought to the notice of this Court when it granted interim relief on 14th December, 2020. Then, this case has been resting upon the compromise arrived at between the accused persons and the complainant. The complainant has joined hands with the petitioners and along with them he has filed this petition. While petitioner Nos.1 to 5 are the accused persons, petitioner No.6 is the complainant. The petition seeks quashing of the F.I.R. filed by respondent No.6 against petitioner Nos.1 to 5. These facts and circumstances of this case are peculiar and makes this case special and an exceptional one.

6. There is another factor which needs consideration at this stage. After the relief was granted to petitioner No.5, no application was moved by the State for cancellation of the interim relief and thus petitioner No.5 has continued to be under protection of this interim relief till date. This would only show that the respondent -

State or the Investigating Officer does not feel any pressing need to arrest petitioner No.5 at least till this date.

7. This would make the case of petitioner No.5 as very special. In the circumstances, we would extend the interim protection granted to petitioner No.5 only for a limited period of time and accordingly interim protection granted to petitioner No.5 on 14th December, 2020 is extended till 18th March, 2021.

8. We make it clear that grant of interim protection to petitioner No.5 shall not be construed in any manner as recording of *prima facie* finding affecting merits of the case of petitioner No.5. We further make it clear that we have not commented upon absence or presence of any *prima facie* case viz-a-viz petitioner No.5 and this issue would have to be decided by the Court of competent jurisdiction on its own merit without being influenced in any manner by the order passed this Court. The petition is, therefore, dismissed as withdrawn subject to above observations.

JUDGE

JUDGE