

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

CRIMINAL APPLICATION (ABA) No.671 OF 2021

(Ms. Sujata d/o Namdeo Masram Vs. The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.M.Ukey, Advocate for the applicant.
Mr. A.M.Deshpande, APP for the non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 06-10-2021

1. Heard.

2. The applicant-Lady, who is apprehending to be arrested in Crime No.447/2021 registered with Police Station, Sitabuldi, Nagpur for the offence punishable under Section 384 read with Section 34 of the Indian Penal Code, is claiming pre-arrest protection till her application for grant of anticipatory bail would be decided by the Sessions Court. Initially, the applicant has applied for grant of anticipatory bail to the Sessions Court by filing Misc.Criminal Application No.3115/2021 along with separate application for grant of interim protection till disposal of main application. The Sessions Court after considering the matter was pleased to reject interim protection vide its order (Exhibit 3) dated 4.10.2021 and issued notice on main application returnable on 8.10.2021.

3. The grievance of the applicant is technical one, as he would submit that in view of the Amendment to Section 438 of the Code of Criminal Procedure, the Sessions Court ought to have rejected the main application, if he was not inconvenienced for granting interim protection. According to him, if the Sessions Court thought it fit to hear other side and to decide main application finally, in that case, he ought to have protected the applicant till that time. According to him, the Sessions Court could have adopted the third course of keeping the interim application pending till hearing of main application. In support of the said contention, he relied on the decision of this Court in the case of **Shrenik Jayantilal Jain Vs. Neena Shrenik Jain; State of Maharashtra reported in MhLJ (Cri) 130**. In said case, this Court has occasioned to consider a similar issue. Upon which this Court has observed as below:

“25. Thus, these judgments are distinguishable as this issue was not discussed. With this, I conclude that a Judge may either pass interim order or may reject the application forthwith or may adjourn the matter only for a short period without passing any order. In the present matter, the application for final hearing is pending and it is fixed on 9th May, 2014 before the Sessions Court. I have already granted interim bail to the applicant/accused, till today. So it is extended by one day and the learned

Sessions Judge is expeted to decide the said application finally on 9th May, 2014. if the application is not decided on that day, the interim protection may be continued till final hearing of the said application.”

4. Mr. Uke, learned counsel would submit that interim order passed on Exhibit 3 about rejection of protection is not made available since it is not uploaded. However, he has filed a case status report from the CIS, which shows that interim application was rejected on 4.10.2021 and the main application has been fixed for awaiting notice on 8.10.2021.

5. In the wake of such position, it is clear that the Sessions Judge in its wisdom did not find it fit to reject the application on the first day but, chooses to hear the respondent on the application. In that case, he ought to have protected liberty of the applicant for time being, otherwise, in case of arrest, the application would become infructuous.

6. Apart from interim protection, the applicant has sought further protection in case of rejection of Misc. Application No.3115/2021 by the Sessions Court. I am afraid to grant such relief in anticipation of rejection of main application by the Sessions Court. When once the main application is pending, no multiple protection can be granted. It is sole discretion of the Sessions Court to

either extend protection despite rejection, if any, or not depending upon the facts of the case.

7. Having regard to the said position, following interim order:

Order

(i) Application stands partly allowed.

(ii) In the event of arrest of the applicant Sujata d/o Namdeo Masram, in Crime No. 447/2021 for offence punishable under Section 384 read with 34 of the Indian Penal Code, she be released on bail on his furnishing PR. Bond of Rs. 25,000/- with one surety in the like amount.

(iii) This interim protection will remain in force only till decision of main application on merits.

(iv) The applicant shall attend concerned Police Station on Thursday and Tuesday in between 12.00 noon to 02.00 p.m. till final disposal of main application by the Sessions Court.

(v) The applicant shall not directly or

indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(vi) The learned Sessions Judge shall make every endeavour to decide the main application preferably on 8th October 2021 but, not later than 14th October, 2021.

8. Criminal Application stands disposed of in the aforesaid terms.

JUDGE

ambulkar