

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.436 OF 2022
IN ABA/15/2022**

MADHUKAR LIMBAJI GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. G.L. Deshpande, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 17th FEBRUARY, 2022.

PRONOUNCED ON : 21st FEBRUARY, 2022

ORDER :

1 Present application has been filed for restoring Anticipatory Bail Application No.15 of 2022 disposed of by this Court on 21.01.2022.

2 Heard learned Advocate Mr. G.L. Deshpande for the applicant and learned APP Mr. V.M. Kagne for the respondent.

3 Learned Advocate for the applicant by tendering apology fairly submitted that it was his mistake that he made on 21.01.2022 in respect of

present applicant that during the pendency of the application applicant No.1 Madhukar Limbaji Gaikwad i.e. present applicant expired. He has submitted documents to show that why he got that impression. He submits that before his said application i.e. Anticipatory Bail Application No.15 of 2022 was listed, he was contacting the applicant, however, the applicant was not picking up his phone nor responding. Therefore, on 19.01.2022 he gave message on the WhatsApp of the applicant that since he is not picking up the Advocate's phone, he should contact the Advocate and to state as to what is to be done in respect of the application. Thereafter, in response, he received a photograph on WhatsApp from the same number. In that photo, photo of a person to whom garland was put was forwarded, depicting that, that person has expired. Therefore, the Advocate was under impression that his client i.e. present applicant had expired. However, now, it turned out to be the fact that the person who was expired was the near relative of the applicant, whose features are similar to the applicant. After that statement was made by the Advocate, this Court had disposed of that application to the extent of the present applicant and granted application in respect of other applicants. It is also stated that after the order was taken by those other persons as well as this applicant, they went to Police Station. Then, police informed about the said fact to the applicant. He then contacted the Advocate and the entire confusion was solved. The applicant also states that he was not receiving the

calls of his Advocate, because he has not paid the fees of the Advocate.

4 The applicant as well as the learned Advocate for the applicant have tendered unconditional apology to the Court. Taking into consideration the documents on record as well as the statements made in the application with the apology, the case is made out to restore the said application bearing Anticipatory Bail Application No.15 of 2022, to the extent of present applicant, by recalling the order of disposal of the same.

5 First of all, the confusion arose due to the fact that the applicant was not contacting his Advocate and was not picking up his phones. This is not expected. When a client hands over his brief to the Advocate, then, he should respond to the call of his Advocate. The act of applicant in not responding the calls of his Advocate on the count that he had not paid the fees of the Advocate is absolutely unjustifiable. He could have requested the Advocate to give him time for making payments. Another fact that is required to be noted is that the learned Advocate for the applicant appears to have made haste in identifying the photo sent on his WhatsApp. Though the surname is same, the name of the person who had expired appears to be 'Baburao Laxman Gaikwad', whereas the present applicant is 'Madhukar Limbaji Gaikwad'. He ought not to have confused. Therefore, taking into

consideration all these aspects the application can be allowed, however, it would be with costs, to be paid by the Advocate from his pocket. With these observations, following order is passed.

ORDER

- 1 Application stands allowed and disposed of.
- 2 The order passed by this Court on 21.01.2022 in Anticipatory Bail Application No.15 of 2022 to the extent of applicant Madhukar Limbaji Gaikwad stands recalled and the said application stands restored.
- 3 Place the application for further consideration on 03.03.2022.
- 4 Advocate for the applicant to deposit costs of Rs.2,000/- (Rupees Two Thousand only) to the High Court Legal Services Sub-Committee, Aurangabad on or before 02.03.2022.

(Smt. Vibha Kankanwadi, J.)