

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

BAIL APPLICATION NO.1592 OF 2022

Seema w/o. Santosh Bandewar	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr.H.D.Deshmukh, Advocate for applicant
Mr.A.V.Deshmukh, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 07, 2022**

ORDER :-

Heard learned counsel appearing for the parties.

2. The applicant and her husband had applied for anticipatory bail in connection with Crime No.0127 of 2021 registered with Itwara Police Station, District Nanded, for the offences punishable under Sections 307, 325, 324, 504 and 506 read with Section 34 of Indian Penal Code. Learned Addl. Sessions Judge had rejected the said application. This Court too did not grant the applicant and her husband anticipatory bail. Both of them, therefore, approached the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Cri.) No.5782 of 2021. The Hon'ble Supreme Court, vide order dated 18.07.2022, disposed of the S.L.P. in terms of the following order:-

“1. On 19-8-2021 and 3-9-2021, this Court while issuing notice in the matters, had granted interim protection against arrest to the petitioners, subject to their cooperating with the investigating agencies at all stages.

2. Taking into consideration the averments made in the applications seeking impleadment of the complainant as a party respondent, the said applications are allowed in the Special Leave Petitions.

3. Cause title be amended accordingly.

4. Applications seeking exemption from filing certified copy of the impugned order as also for seeking exemption from filing official translation of the Annexures are allowed in Special Leave Petition (Cri.) No.6277 of 2021.

5. Heard learned counsel appearing for the petitioners, learned counsel appearing for the State of Maharashtra, learned counsel appearing for the Respondent No.2 – complainant and carefully perused the material available on record.

6. During the course of hearing, we are informed by the learned counsel appearing for the State of Maharashtra that the petitioners have not been cooperating with the investigation.

7. In view of the above, we direct the petitioners to surrender before the trial court and apply for regular bail.

8. In case applications for bail are filed by the petitioners before the Trial Court, the said Court is directed to dispose of the same expeditiously, on their own merits and in accordance with law.

9. The Special Leave Petitions are disposed of on the afore-stated terms.

10. Pending applications filed in the matter also stand disposed of.”

3. Thereafter, the applicant and her husband appeared before the trial court and moved an application for bail. It is submitted by learned counsel for the applicant that the applicant and

her husband both were present before the trial court when they moved an application for bail. The applicant's such appearance before the trial court should have been taken by said Court as compliance of the directions of the Hon'ble Supreme Court. The same should have been treated as the applicant to have surrendered before the trial court. The trial Court ought to have taken the applicant into judicial custody or granted her temporary bail, after having heard learned APP and on merits of the matter. Such exercise has not been done. The trial Court, vide order dated 07.09.2022, rejected the application of the applicant with following observations :-

“7. After hearing learned counsel for both the sides and going through the record with their valuable assistance and after considering the matter deeply, the applicant was never arrested by police, she never appeared and surrendered herself. In other words, it cannot be said that the applicant is in custody. As such the application is not tenable in its present form. Taking into consideration the totality of the facts and circumstances emanating from the record, the nature and gravity of the accusation, the reasons discussed herein above and without commenting further anything on merits, lest it may prejudice the case of either sides during the course of trial, the applicant is not entitled for bail.

4. It appears that learned trial Judge has misconstrued the provisions of law. When the applicant was very much present before the trial Court with application for bail, same tantamounts of her having been surrendered before the court. Present application is, therefore, disposed of in terms of the following order:-

(i) The applicant shall again appear on 12.10.2022 before the trial Court in terms of the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Cri.) No.5782 of 2021

(ii) Appearance of the applicant shall be treated as her surrender before the Court concerned.

(iii) The trial court shall decide the application of the applicant on merits after having given opportunity of hearing to the prosecution.

(iv) Parties to act on authenticated copy of this order.

[R.G. AVACHAT, J.]

KBP