

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

927 ANTICIPATORY BAIL APPLICATION NO.1291 OF 2022

NITESH NATTHU VALVI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P. D. Bachate h/f Mr. Raghuwanshi
Rahul R.
APP for Respondent-State : Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 06.10.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent/State at length.
2. The present applicant had moved an anticipatory bail application No.629 of 2022 before this Court. On 16.06.2022, this Court had gone through the papers and expressed disinclination to grant anticipatory bail. Therefore, the learned counsel for the applicant, on instructions, withdrew the application. Leave was granted unconditionally. However, in the present application, it is nowhere mentioned as regards the earlier anticipatory bail application.

3. Learned counsel for the applicant would submit that the charge sheet has been filed. Hence, the applicant has access to the statement of the driver and owner of the goods under Section 164 of the Cr.P.C. He would submit that the charge sheet has been filed against the applicant under Section 299 of the Cr.P.C. Unless the procedure laid down under Section 84 of the Cr.P.C. is followed by the Investigating Officer, the applicant cannot be said to be absconding. He relied on the case of ***Manda Sunil Pawar and others Vs. State of Maharashtra and another***, Anticipatory Bail Application No.1524 of 2021, dated 08.04.2022 and vehemently argued that Section 299 of the Cr.P.C. is an enabling provision for the Courts to record the evidence in the absence of an absconding accused. Under that Section, the police did not have a right to police to file charge sheets. This Court, in the said application, had discarded the report of the police making an attempt to arrest the accused and held that when the reports were unbelievable, it could not be said that the applicant was absconding.

4. The law is well settled that bail applications can be filed one after another, provided that there should be change-in-circumstances. After having gone through the papers, the Court, on 16.06.2022, in its order, had expressed disinclination

to grant the pre-arrest bail to the applicant. Therefore, the burden was on the applicant to satisfy the Court that there were substantial changes in circumstances from the date of the order rejecting his earlier bail application. On the one hand, the learned counsel for the applicant argued that the police did not follow the procedure under Section 82 of Cr.P.C. Therefore, the applicant cannot be said to be absconding. In the case, he relied on *Nanda Sunil Pawar (supra)*, this Court has observed that Section 299 of the Cr.P.C. is an enabling provision for the Courts to record the evidence in the absence of an absconding accused. It does not give any right to police to file a charge sheet under that Section. No provisions as such contemplated that for the accused, who would be arrested at a later point in time, there should be a separate charge sheet.

5. If the argument of the learned counsel for the applicant is considered that in the absence of procedure laid down under Section 82 of Cr.P.C., no charge sheet could be filed under section 299 of the Cr.P.C. However, the applicant has access to the statements of the driver and owner of the goods under section 164 Cr.P.C. It would be difficult to accept that the applicant has access to the statements of the driver and owner of the goods, and it can also not be assumed that filing a

charge sheet against the co-accused is a change-in-circumstances for him to file a fresh bail application.

6. Keeping aside the mistakes of the police, the statements of the driver and the owner of goods recorded under Section 164 of the Cr.PC. are considered; both did not disclose the applicant's name. The driver of the goods vehicle hails from the State of Telangana. He is not well conversant with the Marathi language. The FIR reveals that few accused were immediately apprehended on the spot of the incident, and few fled away. The accused, apprehended on the spot of the incident, immediately disclosed the name of the present applicant. It may be good evidence, at least, to believe that the applicant was involved in the crime. Learned APP correctly pointed out that looted amount was partly recovered from the accused apprehended on the spot. The specific allegations have been levelled against the accused that they have snatched the amount of Rs.18,000/- from the driver of the goods vehicle. The allegations also reveal that after detaining the driver of the goods vehicle, they made a phone call to the complainant. Thereafter, the complainant reached the spot of the incident. In the meantime, it was possible for all the accused to divide the looted amount. Under the memorandum panchnama under

Section 27 of the Evidence Act, a snatched mobile handset of the driver has also been recovered.

7. Learned counsel for the applicant pointed out the contradictions in the statement of the owner of goods that he stated that the police van came there for patrolling; it has not been mentioned in FIR, and there are contradictions as regards the number of the persons came on the spot of the incident. This appears to be not a material contradiction that may help the applicant at this juncture. The FIR is clear that on apprehending two accused persons, the police made an inquiry about the other accused, who absconded from the spot of the incident. The apprehended accused immediately disclosed the name of the applicant to the police. Therefore, the absence of their names in the statements of the driver and owner of goods under Section 164 of the Cr.P.C. would make no difference and cannot benefit the applicant. While considering the bail application, Court has to examine the *prima facie* material collected by the Investigating Officer. The prosecution has a very specific case, the police patrolling van went to the spot of the incident after the complainant narrated the incident to them. When they saw the police van coming, a few accused fled away, and few were apprehended. The persons

apprehended have no reason to implicate the applicant in the crime falsely; this is not a case of the applicant that the applicant had enmity with the persons apprehended on the spot. Hence, they have named the applicant falsely. Since the day of the incident, the applicant has been absconding.

8. In view of the discussion made above, the Court is of the view that the applicant has no case on merits. Hence, the application stands dismissed.

(S. G. MEHARE, J.)

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