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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO.1524 OF 2022**

SANJAY GHANSHAM MUDIRAJ
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Pathan Hamzakhan I.
APP for Respondent/State : Mr. A.A. Jagatkar

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CORAM : S.G. MEHARE, J.

DATED : 02nd DECEMBER, 2022

PER COURT:-

1. The applicant approached this Court for anticipatory bail on the ground of a change in circumstances, and this Court rejected his earlier application on 03.10.2022.

2. The learned counsel for the applicant started arguing that certain facts were not raised in the earlier application. Now the applicant got some documents from exparte departmental inquiry. He was not on duty at the relevant time. During his argument, the Court had gone through the papers. However, the Court did not find an order of the learned Sessions Court. Hence the court got suspicious and find that without exhausting remedy before the learned Sessions Judge, the applicant directly approached this Court. The learned counsel for applicant did not state before arguing the case that the applicant has directly approached this Court giving go by to the remedy available before the learned Sessions Court nor argued why he approached this Court directly.

3. No doubt, section 438 of Cr.P.C. confers concurrent powers to the High Court and the Sessions Court. However, the Hon'ble Supreme Court in the case of Harendra Singh V State of U. P 2019, SCC OnLine All 4571 has held that the bail application filed under Section 438 of Cr.P.C. is not maintainable before the High Court without exhausting remedy before the Sessions Court. In Vinod Kumar v. State of U.P., 2019 SCC On Line 4821, it was held that such application can be filed directly before the High Court with a rider that strong, cogent, compelling reasons and special circumstances must necessarily be found to exist in justification of the High Court being approached first and without the avenue as available before the Sessions Court being exhausted. The Bombay High Court in Mohanlal Nandaram Chaudhary v. State of Maharashtra, 2007 (4) MhLJ 9 has held that the choice of choosing the Court, whether Sessions Court or High Court, for moving an application under Section 438 Cr.P.C cannot be left to be decided by the accused.

4. The High Court does not entertain such applications unless the remedy has been exhausted before the learned Sessions Court as a rule of practice. The purpose behind conferring such powers to the sub-ordinate judiciary is to provide legal services to the litigants at convenient places at the lowest cost. The applicant has no exceptional circumstances to approach the High Court instead of the Sessions Court.

5. Unfortunately the lawyers appearing for the litigants do not render the proper and efficient assistance to the Court. The learned counsel for applicant did not make a fair statement that he approached this Court directly in any special circumstances. He did not pay heed to the legal procedure. The approach was very casual. No appropriate care appears to have been taken to make the Court aware of why a direct application has been moved to this Court. The conduct of the legal practitioner raises a suspicion in getting orders from the Court by hiding the facts and avoiding arguing on law. The Court also felt that it was an attempt to secure the order by suppressing the fact from the Court. Such a practice is deprecated. The poor assistance of the lawyers, who are the officers of the Court unnecessarily waste valuable time, that may lead to the incorrect conclusions and decisions. It may spread a wrong message in society. The suppression of the facts is one of the good grounds to refuse to entertain the application. For the reasons mentioned above, the application stands dismissed.

(S.G. MEHARE, J.)