

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1353 OF 2022

Suresh Namdev Nikam .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Rahul Daigude for the Applicant.
Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : BHARATI DANGRE, J.
DATED : 24th MAY, 2022
(VACATION COURT)

P.C:-

1. Heard the learned counsel for the Applicant and the learned APP.

The Applicant has moved an anticipatory bail application under Section 438 seeking protection from arrest in case of CR No. 139 of 2020, which has been investigated and resulted into registration of RCC No. 279 of 2020. The chargesheet is filed on 15.09.2020.

The Applicant is accused of offence punishable under Section 498-A, 304-B, 306 read with Section 34 of IPC. Pertinent to note that his anticipatory bail application was rejected by the Additional Sessions Judge, Satara on 09.07.2020.

Subsequent to filing of the chargesheet, he moved another application seeking protection from arrest, which was not pressed on 16.02.2022. On the third occasion, he moved on application before the Sessions Court on 29.04.2022 permitting him to surrender before the Court in the wake of filing of the chargesheet in the subject FIR. On this application, the learned Judge passed the following order “Allowed to argue on bail application”.

The learned counsel for the Applicant submit that the learned Judge expressed his opinion that it is not permissible for him to take him in custody, even when the Applicant has offered to surrender and this is the reason which prompted his counsel to not press this application filed under Section 439 of Cr.P.C., for being released on regular bail in the wake of filing of chargesheet.

Worth to note that this reasoning of the learned Judge is not to be found in black and white since the learned counsel offered to withdraw the application and therefore, only the word of learned counsel is to be accepted.

In any case, if the learned Judge was under a notion that he cannot permit surrender, it is a wrong assumption of his powers as it is always permissible for him to permit surrender and on surrender, the accused person would be considered to be in his custody and when an application is moved for his release on bail, the learned Judge ought to have considered the said application. Since this course was not adopted, in any case do not permissible

to the Applicant to approach this Court and again seek his release on bail in anticipation of his arrest, merely on the ground that during the period of investigation and at the time of filing of the chargesheet, he was never taken into custody.

2. In the aforesaid circumstances, it is open to the Applicant to approach to the learned Sessions Judge with a application to surrender and the learned Judge is directed to permit him to surrender and decide his application, if moved for his release on bail filed under Section 439 of Cr.P.C., on merits.

3. With the aforesaid, criminal application is disposed of.

(SMT. BHARATI DANGRE, J.)