

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.192 OF 2022

Bindu Rana Kapoor

Petitioner

versus

Union of India and another

Respondents

Mr.Aabad Ponda, Senior Advocate i/by Mr.Aditya Mithe, Advocate for petitioner.

Mr.H.S.Venegavkar, Special Public Prosecutor, for Union of India

Mr.Arfa Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th February 2022

PC :

1. The petitioner has challenged order dated 24th January 2022 passed by Special Judge below application Exhibit-31. The petitioner has preferred an application for anticipatory bail before the Special Court in R.C.No.BA1/2020/A0004-CBI-ACB, Mumbai which is pending. The contention of the petitioner is that the investigation is completed and the charge sheet is filed without her arrest. Summons has been issued against her for appearing before the Trial Court. Exemptions were granted to petitioner from appearance from time to time. The petitioner apprehended that in the event she appears before Special Court, she may be taken in custody.

2. Learned counsel for petitioner submitted that there are conflicting decisions whether the accused can be taken in custody whenever he or she appear before the Trial Court on receipt of

summons after filing of charge sheet. The said issue is now due for hearing before the Supreme Court in the case of Satender Kumar Antil. The petitioner had preferred intervention application in the said proceedings before the Supreme Court and her intervention has been allowed. It is submitted that the matter before Supreme Court was due for hearing on 20th January 2022 and since the learned Additional Solicitor General was not keeping well, it has been adjourned to 10th February 2022. Since the question of liberty of petitioner is involved she has intervened in the said proceedings. Hence, the Special Court was requested to adjourn the application for anticipatory bail. The Special Court has declined the prayer and posted the application on 4th February 2022. This petition was heard on 3rd February 2022. It was contended that since the matter is coming up before the Supreme Court on 10th February 2022, the application pending before the Special Court may be directed to be adjourned beyond 10th February 2022 and this petition may be heard on 11th February 2022. There is no interim relief in application for anticipatory bail pending before Special Court and the petitioner is not taking any advantage by adjournment in the said application. The impugned order is illegal.

3. Thus, the petitioner was aggrieved by the order dated 24th January 2022 rejecting her application for adjournment.

4. Since the application for anticipatory bail was listed for hearing on 4th February 2022 and matter before Supreme Court was due for hearing on 10th February 2022, without going into the merits of the case, this petition was adjourned till today with request to Special Court to adjourn the application for anticipatory bail beyond

10th February 2022. The learned Judge posted the application for anticipatory bail on 14th February 2022.

5. Learned Senior Counsel appearing for petitioner has submitted that the matter before Hon'ble Supreme Court is now adjourned to 9th March 2022. However, application for anticipatory bail pending before the Special Court is due for hearing on 14th February 2022. It is submitted that in view of submissions referred to hereinabove, the hearing of application for anticipatory bail pending before the Special Court, may be adjourned beyond 9th March 2022. It is submitted that in the interest of justice and in view of legal issues involved in the proceedings before the Supreme Court, which has bearing on the application for anticipatory bail, hearing of anticipatory bail application may be postponed. Reliance is placed on following decisions :

- (i) Asgar Ali Vs. State of J & K and others -
2021-SCC OnLine-SC-3095
- (ii) Karan Singh Vs. Delhi Transport Corporation and another
(2017)16-SCC-72;
- (iii) Ram Shiroman Mishra Vs. Vishwanath Pandey
(1012)8-SCC-575;
- (iv) Beghar Foundation through its Secretary and another Vs.
Justice K.S.Puttaswamy (Retd.) and others
(2021)3-SCC-1.

6. In the case of Asgar Ali (supra) the Supreme Court has observed that constitutional validity of the constitutional orders is pending before a constitution bench. The Constitution Bench has

declined to make a reference in regard to the validity of the constitutional orders to a larger bench. The validity of some of the observations of High Court in the judgment under appeal would depend upon the assessment by the constitution bench on the issues involved. Hence it would be appropriate for the three judges bench to await the decision of constitution bench in the pending proceedings. In the case of Karan Singh (supra), the Supreme Court observed that in the interest of justice it shall be appropriate to await the decision on reference made in DTC Vs. Balwan Singh. In the case of Ram Shiroman Mishra (supra), the Supreme Court had observed that in view of conflicting decisions of the Divisions of the Supreme Court pertaining to the issue concerned, the decision of larger bench is awaited. In the decision of Beghar Foundation through its secretary and another (supra), the Supreme Court has observed that if the review petitions were dismissed and the larger bench reference were to disagree with the analysis of the majority opinion, it would have serious consequences and not just for judicial discipline but for the ends of justice. Hence the batch of review petition was kept pending until the larger bench decides the question referred to it.

7. Mr.Venegavkar appearing for the respondent no.1 submitted that supervisory powers of this Court under Article 227 of Constitution of India are not to be exercised in the case of present nature. The petitioner had preferred an application for anticipatory bail before Special Court on the ground that there is apprehension of arrest and hence the Special Court is bound to proceed with the hearing of the said application. The application for anticipatory bail cannot be kept pending for inordinate period. The application was extensively heard by the Court and it was only pending for

arguments in rejoinder. Since the proceedings before Supreme Court were due for hearing on 10th February 2022, the present petition was kept for hearing today. The proceedings before Supreme Court has now been adjourned to 9th March 2022. The application for anticipatory bail thus is required to be heard and it cannot be adjourned repeatedly. In the application for anticipatory bail itself the petitioner had contended that there is apprehension of arrest. Now the petitioner cannot keep on adjourning the application for anticipatory bail. It is, therefore, submitted that this petition may be dismissed and the Special Court hearing the application for anticipatory bail be directed to proceed with hearing of the application for anticipatory bail.

8. The petitioner had moved the application for anticipatory bail before Special Court in November-2021. The order dated 24th January 2022 indicate that both the sides have advanced their arguments on the anticipatory bail application on 15th December 2021 and thereafter advocate for applicant had sought eight days time for submission of rejoinder arguments. The application was then posted on 23rd December 2021 and since the Court was on leave it was posted on 3rd January 2022. The Court granted adjournment on the basis of application Exhibit-28 preferred by petitioner on 3rd January 2022. Hence application was adjourned to 24th January 2022. The Court further observed that on close analysis of the material it reflects that regular bail application of the co-accused was rejected on 21st December 2021 and as pert the submission of the advocate for the petitioner they have filed clarification application in respect of said order. Moreover, anticipatory bail application of the petitioner is pending before the Court for rejoinder arguments and it

is not a regular bail application. Despite accommodation on 3rd January 2022, again adjournment is sought on same ground. When the application for anticipatory bail has been argued by both the sides, it cannot be adjourned repeatedly.

9. Thus, from the aforesaid factual aspects it appears that the application for anticipatory bail is pending before Special Court from November-2021. Arguments of both sides were heard and it is due for arguments in rejoinder. The decisions relied upon by learned counsel for petitioner were delivered in the facts of said cases. The petitioner had indeed intervened in the proceedings which are pending before Supreme Court. Now the proceedings are adjourned to 9th March 2022. The question is whether the Special Court can be directed to postpone hearing of anticipatory bail application repeatedly. The application is part heard. I do not find any infirmity in the order dated 24th January 2022 passed by Special Court. The powers under Article 227 of Constitution of India, which are in the nature of supervisory jurisdiction, cannot be exercised in issuing directions to the Special Court for not to proceed with the hearing of the application for anticipatory bail. This is not the case where such powers enshrined under Article 227 or inherent powers under Section 482 of Cr.P.C. are to be exercised. There is no illegality in the order passed by the Special Court. Hence, this petition deserves to be dismissed. The writ petition is accordingly dismissed.

10. At this stage, learned counsel for petitioner submits that petitioner intends to approach Supreme Court challenging this order and therefore the Special Court may be directed to defer the hearing of application for anticipatory bail. Learned counsel for respondent

no.1 vehemently opposed the said prayer and submitted that it would amount to again adjourning the proceedings pending before the Special Court. The submission of learned counsel for respondent, deserves to be accepted. Hence, this prayer stands rejected.

(PRAKASH D. NAIK, J.)

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