

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2316 OF 2022

Deepak Ganeshlal Sethiya .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Pratik R. Kalantri for the Applicant.
Mr.S.V.Gavand, A.P.P. for the State/Respondent.
API Sagar Shinde, Crime Unit-2, Vasai present.

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CORAM: BHARATI DANGRE, J.
DATED : 20th OCTOBER, 2022

P.C:-

1. On 30/09/2022, learned A.P.P. has made a statement that notice was issued to the applicant under Section 41 of Cr.P.C., but he has avoided to receive the same and it was specifically recorded that in the past, when the investigating team went to the residence of the applicant in Rajasthan to serve the notice, the officer got the trap laid, which constrained him to approach the Rajasthan High Court. Thereupon, the applicant made a specific statement that he shall report to the Investigating Officer, in furtherance of the said notice between 10th to 12th October, 2022.

2. Today, it is informed that the applicant has failed to abide by the condition of attendance. The counsel for the applicant states that he is apprehensive that when he report to the

police station, he shall be arrested. I find the said apprehension totally unfounded, as I had specifically issued a direction to the Investigating Officer to follow the mandate of Section 41A of Cr.P.C., without being prejudiced by past events of a trap being laid against the officers and if he is desirous of effecting the arrest, he shall record his reasons and give 72 hours notice in advance, before effecting the arrest.

From the conduct of the applicant it is apparent that, he even does not trust this Court and that is why, he has chosen not to avail the said option, which was made available to him. The attention of the learned counsel is invited to Section 41A of Cr.P.C., which provides that when a notice under Section 41-A(1) is issued to any person, he is duty bound to comply with the terms of the notice and as long as he complies or continues to comply with the notice, he shall not be arrested in respect of the offence, referred in the notice. However, sub-section (4) of Section 41-A specifically confers a power upon the Officer to effect the arrest, where such person fails to comply with the terms of the notice.

In the wake of the above provision, since the Investigating Officer is vested with the power to deal with the non-compliance of the notice under Section 41A, the application is rejected by recording that the applicant has failed to abide by the said notice.

The Investigating Officer shall exercise the power available to him under Section 41A of Cr.P.C.

(SMT. BHARATI DANGRE, J.)