

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2447 of 2022**

Himanshu Vrajlal Parekh .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Mr. Srinivas Bobde i/b Wesley Menezes, Steven Anthony and
Waqar Pathan for the applicant.
Mrs. Anamika Malhotra, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER, 2022**

P.C:-

1 Peculiar facts brought before me by the learned counsel for the applicant Mr.Bobde deserve that the learned Sessions Judge, who has passed an order on 30/6/2022 be apprised of the latest position of law, as surfacing through the authoritative pronouncement of the Apex Court and particularly, the latest one in case of Satendra Antil Vs. CBI & Anr, AIR 2022 SC 3386.

2 The facts involved, reveal that the offence was registered vide C.R. No.1/2015, which invoked Sections 406,

420, 465, 468, 471 r/w 34 of IPC and on completion of investigation, charge-sheet came to be filed on 4/2/2016. The applicant was shown as Accused no.4 in the said charge-sheet. The charge-sheet record that the applicant was not to be found despite repeated search by the police officer but, in column no.13, he is not shown as 'Absconding' or a proclaimed offender.

Be it so, on 1/4/2022, a warrant is issued against the present applicant and he approached the Sessions Court by filing an application u/s.438 of Cr.P.C, seeking his release on bail in the event of his arrest.

3 The learned Judge proceeded to decide the application on merits highlighting that he was benefited out of the alleged transaction and his custodial interrogation is very much necessary. Surprisingly, this order is passed almost seven years after the offence was registered and without taking note of the fact that throughout this period, the applicant was not arrested. It is high time that the Sessions Court/Judges are also apprised of the latest position of law, before they passed perfunctory orders, unmindful of the legal position and development in law, through the authoritative pronouncements from the highest Courts of this country.

4 On perusal of the impugned order, it can be seen that the learned Judge has failed to consider the prevailing legal scenario and has decided the application on the basis that after

seven years, custodial interrogation is warranted, despite the fact that the investigation is complete and the charge-sheet has been filed.

5 In these circumstances, I deem it appropriate to protect the applicant for a limited period by issuing direction to the Addl. Sessions Judge to decide the application in the wake of the latest position of law to the effect that if the accused has not been arrested during the course of investigation and in this case, even six years after the charge has been filed, whether he can be arrested.

The submission of the learned counsel for the applicant is specific, that he was all the while available, and it is not the case of the prosecution that he was absconding from the year 2016-2022. The factum of his presence during the said period can also be established before the Addl. Sessions Judge by the applicant by filing an appropriate affidavit and the learned Judge taking into account the accusation of the prosecution that he was absconding right from 2015, and was not available for interrogation.

By directing that the applicant shall not be arrested till the Addl. Sessions Judge decide the application within a period of four weeks from today, the present application is disposed off.

(SMT. BHARATI DANGRE, J.)