

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2772 OF 20222

Mr. Raju @ Rajkumar Aswani .. Applicant
Vs.
The State Maharashtra & Anr. .. Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO. 2773 OF 20222**

Dhanraj A. Aswani .. Applicant
Vs.
The State Maharashtra & Anr. .. Respondents

Mr. Abad Ponda. Senior Advocate a/w Jugal Kanani i/b Jaiwant Chandrani for the applicants.
Mr. S. V. Gavand APP for the State.
Ms. Veera Shinde, APP for the State.

**CORAM : BHARATI DANGRE, J.
DATE : 7th OCTOBER, 2022.**

P.C.:

1. Heard Mr. Ponda, learned senior counsel for the applicants and learned APP for the State.

The grievance of the learned senior counsel representing the complainant in this application is under Sections 307, 143, 147, 149 of the IPC and under Section 3(1)(r)(s), 3(2)(v)(a) of the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. An application for grant of anticipatory bail was filed by the applicant on 17 September, 2022 and along with the same, an interim

bail application was also moved.

The learned Sessions Judge deemed it necessary to hear the other side and hence issued notice to the State as well as the complainant. On 22 September, 2022, the matter was again adjourned by recording as under:-

“It is necessary to give time to police and original complainant to submit say to know what is the role of the applicant. Hence interim relief cannot be granted. Hence time is granted for say till 27.09.2022.”

3. On 27.09.2022 when the interim application was again pressed into service, the learned Judge by recording as under rejected the application Exhibit 11:-

“Today the learned counsel for the accused/original applicant filed this application Exhibit 11 and argued that, the applicant is undergone liver surgery in 2012 and he requested for interim relief till next date. Read citation relied by the learned counsel for the applicant. However, it revealed from record that already opportunity of hearing is given to other side and since there is bar of Section 18 of the SC & ST Act, I found it necessary that ad-interim anticipatory bail cannot be granted to the applicant without final hearing of the matter to see the material of both side parties to verify whether bar of Section 18 of the SC & ST Act is attracted or not. Hence in view of the above reasons, this application Exhibit 11 stands rejected.”

4. The learned Judge thereupon passed the following order:-

“In view of oral common request of both side parties, the matter be kept for say on 04 October, 2022.”

5. On 04 October, 2022, an application is filed by the victim seeking 10 days time on the pretext that various legal issues are involved.

Roznama of 4 October, 2022 scheduled the hearing of the application on 11 October, 2022.

6. From the sequence of the events, it can be seen that the learned Judge has rejected the prayer of ad-interim relief which was prayed vide Exhibit 11. However, in the wake of Maharashtra Amendment to Section 438 of the Cr. P.C., this course is not available to him. As per the said amendment, the Sessions Court may either reject the application forthwith or issue an interim order for grant of anticipatory bail. Proviso appended to sub-section (1) of Section 438 of the Cr. P.C. is absolutely clear and it is only in the event of this Court or the Court of Sessions not passing an interim order under this sub-section or rejecting the application for grant of anticipatory bail that it is open to the Investigating Officer to arrest without warrant. The learned Judge however has failed to follow the mandate of the said Section and has simply adjourned the application for say. It is informed that the application is listed on 11 October, 2022. It is not open for the concerned Court to indefinitely keep on postponing the matter on the ground of say not being given, and the intention of the victim appearing

to be very clear from the application filed on 04 October, 2022 where he seeks 10 days time to file his say. In any case, the say may be given or not on or before the returnable date i.e. 11 October, 2022, the learned Judge on hearing the learned APP and the counsel for the victim shall make up his mind whether to reject the application or grant the interim relief in the anticipatory bail application.

7. It is expected that the learned Judge shall follow the provision inserted by the Maharashtra Amendment which has re-framed the provision relating to grant of anticipatory bail. It is imperative that on the said date, the same course of action shall be followed by the learned Judge.

8. The application is disposed of.

(SMT. BHARATI DANGRE, J.)

corrected as per speaking to minutes dated 10 November, 2022.