

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.787 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.362 OF 2022

Gorang Kalipodo Pal	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Kuldeep U. Nikam with Mr.Prasad V. Avhad, Advocate for Applicant.
Mr.M.G.Patil, APP, for State.

CORAM : PRAKASH D.NAIK, J.

DATE : 10th March 2023

PC :

1. This is an application for recalling order dated 10th October 2022 passed by this Court in Anticipatory Bail Application No.362 of 2022 and modify the same to the extent of giving liberty to withdraw the said Anticipatory Bail Application with liberty to prefer/pursue an application for anticipatory bail before Additional Sessions Court, Satara at Wai in light of change in circumstances, which the applicant has already preferred.

2. Learned Advocate Mr.Nikam appearing for applicant submitted that order dated 10th October 2022 was invited under misconception of fact and incorrect instructions. The order indicate that submission was made before the Court that applicant is arrested and hence

application has become infructuous. In view of the statement made by learned Advocate for applicant, Anticipatory Bail Application No.362 of 2022 was disposed off as infructuous.

3. Mr.Nikam submitted that factually the applicant was not arrested. In view of change in circumstances, he preferred fresh application for anticipatory bail before Sessions Court viz Criminal Miscellaneous Application No.636 of 2022 on 6th September 2022 and learned Sessions Judge granted interim protection vide order dated 6th September 2022. The said application is pending before Sessions Court. On account of communication gap, learned advocate representing applicant before Sessions Court was under impression that application preferred before this Court was withdrawn.

4. Learned APP submitted that incorrect statements are made in the application preferred by applicant before the Court of Sessions pursuant to disposal of ABA No.362 of 2022.

5. The applicant preferred application for anticipatory bail before Sessions Court, at Satara on 7th December 2021. The said application was rejected by Sessions Court vide order dated 12th January 2022. The applicant preferred ABA No.362 of 2022 before this Court. The order dated 10th October 2022 passed in ABA No.362 of 2022 records that learned advocate for the applicant on instructions submitted that the applicant is arrested and hence

application has become infructuous. The same may be disposed off. In view of submission, application is disposed off as infructuous. Apparently applicant was not arrested and incorrect submissions were advanced for withdrawing the application. In fact before disposal of aforesaid application by this Court, the applicant had preferred fresh application for anticipatory bail before Sessions Court at Satara on 6th September 2022. Learned Advocate for applicant produced the copy of anticipatory bail application and application for ad-interim anticipatory bail dated 6th September 2022 preferred before Sessions Court, at Satara. In the said applications it was averred that applicant was granted ad-interim protection and it was extended from time to time. However, on 27th July 2022 the advocate forgot to extend the interim protection and subsequently insisted the applicant to file the petition before lower Court. While the application for anticipatory bail was pending before this Court, no interim protection was granted to applicant. Mr.Nikam, however, submitted that confusion about grant of interim relief was on account of order dated 4th April 2022 passed by this Court in ABA No.363 of 2022 wherein it was mentioned that interim protection already operating to continue till next date. The applicant must be aware that prior to 4th April 2022 no interim relief was granted to the applicant by this Court nor subsequent orders dated 6th June 2022

and 22nd June 2022 refers to grant of interim relief. However, the applicant has stated before Sessions Court that interim relief was extended from time to time. I have also perused order dated 6th September 2022 passed by Sessions Court, Satara granting interim protection to the applicant. The order indicate that submissions were made at the instance of applicant that applicant-accused no.1 moved application before High Court on 6th July 2022. Ad-interim protection was granted, however, advocate for applicant thereafter failed to continue it. Therefore application was disposed off. The applicant had contended now that applicant intended to withdraw ABA No.362 of 2023 to prefer application before Sessions Court. Learned Sessions Judge granted interim protection vide order dated 6th September 2022. It is apparent that correct facts were not pointed out to the Sessions Court while arguing the application for anticipatory bail or seeking interim relief.

6. Considering the fact that applicant was not arrested on the day on which application was disposed off by this Court, the order dated 10th October 2022 is modified to the extent that at the request of learned Advocate for applicant application is allowed to be withdrawn and disposed off.

7. Learned Sessions Judge, Satara, shall decide the fresh application viz Criminal Miscellaneous Application No.6361 of 2022

for anticipatory bail considering all the aspects on merits and in accordance with law..

8. Interim Application No.787 of 2023 is disposed off.

(PRAKASH D. NAIK, J.)

MST