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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2997 OF 2022**

Shankar Dada Kharat ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr. D. W. Bhosale for the Applicant.

Mr. Y. Y. Dabke APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 13TH FEBRUARY 2023

P.C:-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.

2. This Court has already granted interim protection as per the order dated 10th November 2022, thereafter matter is adjourned, time and again.

3. Learned Advocate for the Applicant contended that the Applicant has attended Satara Taluka police station from April 2013 till August 2013 in connection with C.R. No.214 of 2010 and that is referred (by case No) by this Court in the order dated 10th November 2022, while granting ad-interim protection. In addition to that the

attendance given to present Satara police station from 3rd August 2021, is also relied upon. This attendance is in respect of C.R.No.209 of 2021 for the offence punishable under section 376 of the Indian Penal Code.

4. Learned APP to buttress his submission has relied upon the judgment in case of *Lavesh Vs. State (NCT of Delhi)*¹ that if the accused is declared as proclaimed offender, the anticipatory bail is not maintainable. He invited my attention to the observation in para 12 of the said judgment. It is true that the Hon'ble Supreme Court after considering the fact that the Applicant was declared as proclaimed offender has turned down request for anticipatory bail. A query is made whether the charge-sheet was filed in that case. Learned APP invited my attention to para 11, which says about placing reliance upon relevant materials and two status reports submitted by police.

5. Learned APP also invited my attention to page 69 of the charge-sheet. It is copy of panchnama dated 15th September 2012, prepared by Satara City police station. It seems that it was prepared on information received that there are certain named accused persons, who are committing dacoity. He invited my attention to portion from page 70 which says that present accused escaped by taking advantage of darkness. He also invited my attention to the orders passed by learned Magistrate about issuance of warrant and warrant of proclamation.

1 (2012) 8 SCC 730

6. There are two aspects, one is that the Applicant has absconded and another is merit of offence. In the charge-sheet filed in present offence bearing C.R. No.539 of 2012 registered under section 392 read with section 34 of the Indian Penal Code. The charge-sheet was filed against in all three persons. The present Applicant is accused No.3, whereas accused Nos.1 and 2 have been arrested. The Applicant is shown as absconding. The charge-sheet is filed in the year 2013.

7. After considering entire material, it reveals that there are some of materials which supports the prosecution case whereas there are some materials which supports the case of the Applicant. It is true that as per certificate given by police Patil Mr.Ganesh Jaysing Lokhande, dated 15th August 2019, it is certified that the Applicant is not residing at Wanwasvadi for last five years. Whereas the attendance given to Satara Taluka police station from April 2013 to August 2013, in C.R. No.214 of 2010 suggest that he was available in vicinity of Satara Taluka police station whereas attendance given to Satara City police station from 3rd August 2021 indicates that the Applicant was very much available to Satara City police station.

8. In this case, learned Magistrate has issued non-bailable warrant on 12th April 2016, and thereafter time and again. Whereas proclamation was issued against the Applicant-accused No.3 as per order dated 30th March 2021, probably it must have been issued after police Patil has certified as referred above.

9. The panchnama referred on page 69 was not carried out in particular offence but that was carried out when the police were on investigating duty. Considering the fact that the Applicant has attended two police stations, one Satara Taluka police station and another Satara City police station, it can very well be said that the Applicant has abided to conditions of attendance. So even though he is shown as absconding in the charge-sheet, I am inclined to consider the request for anticipatory bail and not to reject the application at threshold as observed by the Hon'ble Supreme Court in above mentioned judgment, since the factual aspects are different.

10. Now coming to merits of the matter, the first informant has been robbed of Rs.1100/- after pointing out weapon at him. My attention is invited to seizure panchnama about seizure of Rs.1100/-. So cash is already seized. In the same panchnama has referred by learned APP at page 69 that there six accused persons are arrested and there are certain weapons and mobile hand sets seized from them. No doubt the present Applicant is not arrested. So I think that custodial interrogation of this Applicant is not required. The Applicant can be put to strict conditions. At present the Applicant is residing at the address mentioned in title clause of the application and being labourer, he is not residing at earlier address at Wanaswadi. Hence, the following order is passed :

ORDER

- (a) Interim protection granted by this Court on 10th November 2022, is confirmed.
- (b) The Applicant to give attendance to Satara City police station on every Friday and Monday from 6 pm to 8 pm for one year.
- (c) The Applicant to cooperate with the police.
- (d) In case there is change of address, the applicant to inform the police.
- (e) If there is occasion for the Applicant to furnish bail, concerned Court to insist upon local surety.

(S. M. MODAK, J.)