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

ANTICIPATORY BAIL APPLICATION NO.287/2023

LAIK LAL MOHAMMAD KHAN & ANR. ..APPLICANTS

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Nikhil S. Ghate i/b. Adv. Sandeep Mishra for the
applicants.

Ms. A. A. Takalkar, APP for State.

PSI Rajendra Chitte, Rabale Police Station, Navi Mumbai.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 8, 2023.

P.C. :

1. Heard learned counsel for the applicants and learned
APP.

2. This is an application for pre-arrest bail in respect of
First Information Report (FIR) No.I-69/2004 registered with
the Rabale Police Station, under Sections 363, 366 read with
34 of the Indian Penal Code, 1860 (hereafter "the IPC", for
short).

3. Learned APP pointed out that the present applicants
are absconding since July 5, 2004. The proclamation is
issued against them. The investigating officer tried to

search the applicant at their known address in Uttar Pradesh. The proclamation order was pasted on the door of the house of the applicants.

4. The complaint was lodged by one Yakoob Ismail khan alleging that on January 30, 2004, when they woke up in the morning they found that the daughter of the complainant aged 15 years was not at home. The missing complaint was, therefore, filed on February 2, 2004 with the Rabale Police Station. They searched for their daughter. The brother of the complainant informed that since January 31, 2004, the watchman of the building Lal Mohammad Khan (accused no.1) and sons Laik Khan and Khalik Khan (the applicants herein) were also missing. On February 1, 2004, Lal Mohammad Khan (accused no.1) and the applicant no.1 called the brother of the complainant to tell him that they had brought the missing girl from Airoli. The applicant no.1 expressed his desire to marry Tabassum. The accused no.1- Lal Mohammad Khan was arrested on July 6, 2004 and he has been released on bail. The present applicants absconded.

5. My attention is invited to the decision of the Hon'ble

Supreme Court in the case of **Prem Shankar Prasad vs. State of Bihar and anr.**¹ wherein in paragraph 16 it is observed thus: -

“16. Recently, in Lavesch v. State (NCT of Delhi) [(2012) 8 SCC 730], this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as ‘absconder’. Normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

Thus the High court has committed an error in granting

1 AIR 2021 SC 5125

anticipatory bail to respondent No.2 – accused ignoring the proceedings under Section 82-83 of Cr.PC.”

6. In this view of the matter, as the applicants have been declared as proclaimed offenders in terms of Section 82 of the Code of Criminal Procedure, they are not entitled to the relief of the anticipatory bail.

7. The application is rejected and disposed of accordingly.

(M. S. KARNIK, J.)