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

ANTICIPATORY BAIL APPLICATION NO.285 OF 2023

Dhanesh Maruti Thorat	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION (ST.) NO.10692 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.285 OF 2023**

The State of Maharashtra	... Applicant
V/s.	
Dhanesh Maruti Thorat	... Respondent

VAIBHAV
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Mr. Vijay Jha i/by Law Juris for the applicant.

Mr. Mahesh Mule, Special P.P. with Ms. Nidhi Narwekar
for the respondent.

Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2023

P.C.:

1. Apprehending arrest in connection with F.I.R. No.171 of 2022 registered with Nhava Seva Police Station, Navi Mumbai, for offences punishable under Sections 364A, 387, 323, 504, 506, 34 read with Section 120-B of the Indian Penal Code, 1860 and Sections 3 and 25 of the Indian Arms Act, 1959, the applicant is

seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution, the informant has the business of material supply. The accused No.1-Vicky Alias Vikrant Deshmukh, accused No.2-Jitendra Alias Bala Deshmukh and his friend accused No.3-Parashuram Mokal are well-known criminals in the vicinity. Multiple crimes were registered against them. On 8th May 2022, at about 08:15 p.m., the informant forcibly took the informant's Bolero vehicle and accused Nos.1 to 3 by showing a revolver to him, demanding a ransom of Rs.2 Crore. The informant got frightened and agreed to pay Rs.75 Lakh. The informant paid an amount of Rs.5 Lakh in cash to accused No.6-Vijay Mhatre. Thereafter, the informant constantly received threats for ransom. The informant got scared and avoided receiving their phone calls.

On 22nd May 2022, the applicant spoke with the informant on the phone. The applicant introduced himself as the brother-in-law of the accused No.1. The applicant threatened the informant to comply with the ransom demand as decided. Thereafter through WhatsApp, the applicant called the informant but the informant did not receive phone calls. The informant transferred the amount of Rs.1 Lakh to the account of accused No.6-Vijay Mhatre. The informant received a threat call from accused No.2 to end his life as the murderer of Ashok Gharat. The informant, therefore, lodged a report.

3. The applicant applied for anticipatory bail under section 438 of the Criminal Procedure Code, 1973, before the Sessions Judge,

which has been rejected by an order dated 19th January 2023. Aggrieved thereby, the applicant has filed present application.

4. During the pendency of the present anticipatory bail application, the investigating agency, after approval from a competent authority, has invoked provisions of the Maharashtra Control of Organized Crime Act, 1999, against the applicant. The investigating agency, therefore, has objected that the present application is not maintainable in view of the bar contained under section 21(3) of the Maharashtra Control of Organized Crime Act, 1999 (hereafter, MCOC Act 1999, for short). Apart from the application's maintainability, it is submitted that the applicant has been arrested in connection with *F.I.R. No.159 of 2022* and is presently lodged in Taloja Central Prison as a trial prisoner. Therefore, there is no need to entertain the application.

5. Learned advocate for the applicant submitted that the applicant had been falsely prosecuted merely because he happens to be the brother-in-law of Vikrant Deshmukh, against whom there are 39 crimes registered, and provisions of the MCOC Act, 1999 are applied. He submitted that no material connects the applicant with co-accused Vikrant Deshmukh. Since the prosecution has failed to make out a prima facie case, the bar under section 21(3) of the MCOC Act, 1999, is not attracted to anticipatory bail. It is submitted that the Single Judge of this Court in Anticipatory Bail Application No.2857 of 2021 (**Alnesh Akil Somji vs the State of Maharashtra**) decided on 14th December 2021, has held that application under section 438 of the Criminal Procedure Code, 1973, is maintainable despite applicant having been arrested in

different offences. He relied on the judgment in the case of **State of U.P And Another vs. C.L. Agrawal And Another** reported in (1997) 5 SCC 1 to urge that in case this Court intends to differ from the view of Single Judge of this Court, it is necessary to refer the matter to the larger bench. He submitted that observations in Paragraphs 51 and 52 of **Narinderjit Singh Sahani & Anr. vs. Union of India & Ors.** reported in (2002) 2 SCC 210 are obiter dicta and, therefore, not binding on this Court. Additionally, he relied on the following judgments:

- a) J.K. Industries Ltd. And Others vs. Chief Inspector of Factories And Boilers And Others reported in (1996) 6 SCC 665.
- b) Moti Ram Deka vs. N.E.F. reported in (1964) 5 SCR 683.
- c) Rajeswar Prasad Misra vs. State of West Bengal And Another reported in (1996) 1 SCR 178.
- d) Commissioner of Sales Tax, J & K And Others vs. Pine Chemicals Ltd. And Others reported in (1995) 1 SCC 58.
- e) State of Punjab vs. Baldev Singh reported in (1999) 6 SCC 172.
- f) Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd. Reported in (1992) 4 SCC 363.
- g) Krishna Kumar vs Union of India And Others reported in (1990) 4 SCC 207.
- h) Arnit Das vs. State of Bihar reported in (2000) 5 SCC 488.
- i) Union of India And Others vs. Dhanwanti Devi And Others

reported in (1996) 6 SCC 44.

j) Orient Paper And Industries Ltd. And Another vs. State of Orissa And Others reported in 1991 Supp. (1) SCC 81.

k) Government of India vs Workmen of State Trading Corporation And Others reported in (1997) 11 SCC 641.

l) State of U.P. And Another vs. Synthetics And Chemicals Ltd. And Another reported in (1991) 4 SCC 139.

6. I have perused the case papers and heard learned to advocate for the parties. It is not in dispute that during the pendency of the present application, the investigating agency has applied provisions of the MCOC Act, 1999, against the applicant. Single Judge of this Court in Anticipatory Bail Application No.453 of 2018 (**Chandrakant Vishnu Sawant And Anr. vs The State of Maharashtra**) decided on 28th November 2018, has held that an application under section 438 of the Criminal Procedure Code, 1973 is not maintainable in view of section 21(3) of the MCOC Act, 1999.

7. It is, therefore, necessary to consider the prima facie case for the applicability of the MCOC Act. According to the prosecution, on 22nd May 2022, the applicant called the informant and threatened him to receive calls from Vikrant Deshmukh (gang leader). Thereafter, the informant got missed calls through the social media application WhatsApp. From the material produced on record, it appears that the informant got five missed calls from the applicant between 19:26 to 19:30 on 25th May 2022. On 22nd May 2022, the informant got two missed calls from the applicant's

number. Such missed calls lend credibility to the allegations in the report. The material on record to make out a prima facie case for applicability of the MCOC Act is sufficient. However, it will be open for the applicant to agitate his grievance in appropriate proceedings, as permissible in law.

8. Furthermore, it is undisputed that the applicant is in prison in connection with *F.I.R. No.159 of 2022* lodged with Nhava Seva Police Station, Navi Mumbai. The Apex Court in the case of **Narinderjit Singh Sahani & Anr.** (supra) considered a situation where the applicant applying for anticipatory bail who was already inside the prison upon arrest in relation to other cognizable offences. The Apex Court in that context in paragraphs 51 and 52 observed as under:

“51. On the score of anticipatory bail, it is trite knowledge that Section 438 CrPC is made applicable only in the event of there being an apprehension of arrest. The petitioners in the writ petitions herein are all inside the prison bars upon arrest against all cognizable offences, and in the wake of the aforesaid question relieving the petitioners from unnecessary disgrace and harassment would not arise.

52. In that view of the matter and since no infraction can be identified, the petition also cannot be sustained as regards the issue of anticipatory bail under Section 438.”

9. Learned advocate for the applicant submitted that this Court, in Criminal Anticipatory Bail Application No.2857 of 2021 (**Alnesh Akil Somji vs the State of Maharashtra**), held that anticipatory bail application is maintainable although the applicant is in custody for other cognizable offence.

10. Other judgments relied upon by the applicant have no

bearing on the points decided by this Court; therefore, it is not necessary to refer to them in detail. Suffice it to say that the judgments are inapplicable in the facts of the present case.

11. In view of observations made by the Co-ordinate Bench of this Court, I am not considering the maintainability of the application. However, it needs to be noted that there is a distinction between the maintainability of an application and its interminability. Merely because an application is maintainable, other factors may dissuade this Court from entertaining the application. Therefore, in my view, considering observations made by the Apex Court in paragraphs 51 and 52 in the case of **Narinderjit Singh Sahani & Anr.**, I am refusing to entertain present anticipatory bail application on the ground that the applicant is in prison in another offence, and provisions of the MCOC Act, 1999 are prima facie applicable.

12. For the foregoing reasons, anticipatory bail application is dismissed.

13. In view of disposal of anticipatory bail application, nothing remains to be adjudicated in the interim application. The same stands disposed of.

14. However, this Court had protected the applicant by way of ad-interim order. The said ad-interim order shall remain in force till 20th July 2023.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 20th July 2023. The corrections in paragraphs 4 and 8 are shown in italicize.