

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO.387 OF 2023

Vivekanand Tukaram Khilare	]	..	Appellant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Sachin Rajepandhare for the Appellant.

Mr.N.B. Patil, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 5th April, 2023

P.C.

1] A strange interpretation of the provisions of law and misreading of the decision of the Bombay High Court has resulted in an apparently erroneous order being passed by the Additional Sessions Judge, Pandharpur on 16.03.2023, when he rejected the Application seeking anticipatory bail in CR No.183/2023, which invoked the provisions of Indian Penal Code as well as the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in particular Sections 3(1)(r) and 3(1)(s).

2] I need not go into merits of the case as the sequence of events placed before me through the Roznama apparently establish that the learned Judge has fallen in grave error.

3] On facing accusation under Section 143, 147, 149, 504, 506 of the IPC read with Section 3(1)(r) and 3(1)(s) of the Prevention of Atrocities Act in the subject CR, the Appellant filed an Application seeking protection from arrest, on the ground that prima-facie, no offence is made out under the Prevention of Atrocities Act.

The application being listed before the District and Sessions Judge, Pandharpur, on 06.03.2023, the following order was passed :-

“Read the application and the documents on record. It seems that there are multiple FIR lodged by both the party against each other. Hence considering the contention in FIR, I feel it necessary to hear other side before any ad-interim order of Anticipatory Bail. Therefore, issue notice to Respondent S.O. 10.3.2023.”

4] On 10.03.2023, when the matter was listed, the learned APP moved an application seeking time to file the reply as investigation papers and report of the Investigating Officer was not received.

On 15.03.2023, which was the scheduled date, the Applicant submitted his written submissions.

The roznama of 15.03.2023, record as under :-

“Advocate for Applicant present. Adjourned for order on 16.03.2023.”

5] By order dated 16.03.2023, the application came to be rejected. It is placed at Exhibit G and impugned in the present Appeal.

The reasoning adopted for reaching the aforesaid conclusion would reveal erroneous assumption of certain facts, the first being the fact noted in para 2 of the order, which state as under :

“The perusal of impugned order showed that the applicants were heard, at length.”

The learned Judge, thereafter, placed reliance upon the decision of this Court in the case of **Pradeep Pushpakant Goragandhi vs. State of Maharashtra**, in Criminal Application No.6592 of 2005, where, it is recorded, that when the ad-interim relief pending the application for

anticipatory bail is refused, proper course will be to reject the application for anticipatory bail.

In the backdrop of these two facts, placed before the Court, the learned Judge record that if ad-interim relief pending application for prearrest bail is not granted, the proper course will be to reject the main application for anticipatory bail. Further, recording in Para No.6, 7 and 8 is interesting and I would like to quote the observations of the learned Judge, in verbatim :-

“6. Now, it is well settled principle that if ad-interim relief pending the application for pre-arrest bail is not granted, the proper course will be reject the main application for pre-arrest bail.

7. Admittedly, my predecessor has not granted interim relief in favour of the applicants which in turn make it clear like cloudless sky that he has rejected the prayer seeking interim relief but instead of rejecting the main application forthwith he issued notice. Further, the impugned order make it clear that my predecessor has not adjourned the matter without passing any order. Therefore, it is crystal clear that the application seeking ad-interim relief pending the application for pre-arrest bail is not granted vide impugned order.

8. Thus, in view of settled legal principles the proper course was to reject the main application for pre-arrest bail. In other words on the date when the impugned order was passed on the application (Exhibit 04), the main application seeking pre-arrest bail was required to be rejected forthwith. Hence, as the main application itself was/is not tenable it is not necessary to decide the main application on merit.”

6] The above order make it evident that the learned Judge has completely lost sight of the fact that there is no refusal to grant interim relief, when on the first date only notice was issued and there is no order passed by the predecessor of the learned Judge refusing ad-interim and hence the ratio laid down in the case of **Pradeep Pushpakant Goragandhi** (*supra*), would not come into foreplay at all.

7] It is a trite position of law that if after hearing parties ad-interim relief is refused, in an application seeking pre-arrest bail, then in that contingency, unless and until an exceptional case is made out by the

prosecution, so as to reverse the said finding of entitlement for ad-interim relief, the said order would deserve affirmation, but there may also be a possibility that even at a particular stage merely recording a prima facie view, without hearing the public prosecutor also the interested party or affected party, if an ad interim relief is refused, on a full fledged hearing, the Application can still be allowed.

In any case, none of this contingency existed before before the learned Judge as there was no refusal of any ad-interim order and the learned Judge has misconstrued when he record in Para 2, that the 'Applicants were heard at length' and in Para 7 when he has misconstrued that not granting any interim relief by itself is a ground for refusal of Anticipatory Bail. This misconception has been emerged from the fact that the learned Judge has presumed that the parties were heard and ad-interim relief is not granted, but roznama of the case, speak otherwise.

8] I need not comment anything more and suffice it to state that let the concerned Judge hear the Application filed by the Applicant on its own merits without being influenced by his earlier observations. In the meantime, it is expected that the Application be taken up for hearing at the earliest and in any case, not later than 2 weeks from today and the same shall be decided on merits.

In the meantime, the Applicant shall not be arrested as it is settled position of law that an act of the Court shall not prejudice any one. '*Actus curiae neminem gravabit*'.

Appeal is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]