

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.441 OF 2023

Sandeep Prakash Sonigara .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr.Kamran Shaikh i/b Adv. H.S. Udayar for the Applicant
Ms. P.N. Dabholkar, APP for the State.
Mr. Mohan Sonawane, PSI, Arnala Police Station.

CORAM: BHARATI DANGRE, J.
DATED : 3rd MAY 2023

P.C:-

1 In CR No. 370 of 2021, the applicant along with his mother were apprehending arrest, and hence they filed an application seeking protection from arrest before the Additional Sessions Judge, Vasai. The subject CR invoked Sections 498-A, 406 read with 34 of IPC.

2 The application was heard by the learned Judge, wherein he recorded a clear finding that long and continuous police custody of the applicants may not be necessary and since the complaint also alleged *streedhan* being retained by accused persons, the Court recorded that the informant can take recourse to civil action, if so advised.

The application was allowed subject to certain conditions. The release of the applicants on bail was subjected to execution of PR bond of Rs. 15,000/- each and furnishing one solvent surety each, in the like amount. Apart from this condition no.3, 5 and 6 which was imposed as under:

3. "The applicants shall attend the concerned Police Station for interrogation on the 2nd, 3rd and 4th May 2022 between 11.00 a.m to 1.00 p.m. and, thereafter, as per the direction given by the I.O in writing, and shall always co-operate with the investigating agency fully.

5. The applicants shall surrender their passports, if any, to the concerned Police Station."

6. The applicants shall not leave India without prior permission of the Court".

3 Alleging disobedience of the said order, an application was moved for cancellation of bail by the Investigating Officer and the Court of Sessions at Vasai by order dated 15/3/2023 recorded that the applicant no.1 is in breach of the order and he has failed to furnish the surety as well as report to the Investigating Officer as directed and for the reasons recorded in the order, the Anticipatory Bail granted was cancelled and liberty was conferred on Investigating Officer to arrest the applicant no.1.

4 It is this order dated 15/3/2023, which is challenged in the present application.

The learned counsel for the applicant would admit that he has failed to abide by the directions to report to the Investigating Officer on 2nd , 3rd and 4th of May 2022, but he offered an explanation that since the order was belatedly communicated to him and he is resident of Chennai, he could not remain present before the Investigating Officer on the said date. However, on 26/5/2022 he addressed a communication to the Investigating Officer, the communication being placed on record at Exhibit-I, which is duly acknowledged by the Investigating Officer of Arnala Sagari Police Station, wherein he informed that the accused no.1 booked a flight ticket of 10/5/2022, for marking his attendance and for furnishing surety, but the accused no.2 took ill, and in fact, the said fact was informed to the IO and request was made to grant some time to furnish surety.

In the said communication the following statement specifically was made:

“That the ABA order also has direction to surrender the Passport of the Applicants if any, so Passport of Sandeep Prakash Sonigara is been surrender to the IO today. The Applicants are present before the Arnala Police Station to give attendance and surety kindly do the needful and acknowledge the same”.

5 When the learned APP is asked to ascertain whether the applicant has reported to the Investigating Officer on 26/5/2022, she on instructions of Mr. Mohan Sonawane, PSI, who is present in the Court, do not dispute the said statement,

but submit that since there was no compliance of the earlier order and he failed to report on 2nd , 3rd, 4th May, 2022 and did not furnish surety, his attendance was not marked on 26/5/2022. In any case, considering the breach of the order, on 4/6/2022 an application for cancellation of bail was moved.

6 My attention is invited to an order passed by Division Bench on 9/2/2023 in the Criminal Writ Petition filed for quashing of the subject CR by projecting that decree for restitution of conjugal rights is already passed in favour of the petitioner and the petitioner is ready and willing to co-habit with respondent no.2 i.e. the wife.

Notice came to be issued to the respondent and at the same time, statement made on behalf of the petitioner (the applicant herein) was accepted that he shall report to the Investigating Officer on 20/2/2023 and surrender his passport, in compliance of the order.

The said compliance has been undertaken and the passport has been surrendered by the present applicant.

7 It can thus be seen that applicant was released on bail subjecting to certain conditions, and it is not disputed that there is no compliance of the said conditions on two aspects; first, there is no attendance to the police station as directed and secondly, the sureties are not furnished. However, considering the fact that on a subsequent date i.e. 26/5/2022, the applicant appeared before the concerned Investigating Officer and not only

this in furtherance of the order passed by the Division Bench, on 20/2/2023 also he marked his attendance before the Investigating Officer and surrendered the passport. Since the applicant is resident of Chennai and the statement that the order was communicated belatedly and therefore, he could not go to the concerned Police Station cannot be doubted.

No doubt, the orders passed by the Court definitely cannot be taken for granted and must be strictly abided by, but in the present case, since the discord in the subject CR appears to be between the husband and wife and petition for quashing has been filed, in the background of a decree of restriction of conjugal rights being granted in favour of the applicant, I deem it appropriate to grant an indulgence by permitting the applicant to report to the Investigating Officer, so that he can complete the investigation in the subject CR registered in the year 2021 and file the charge-sheet.

Apart from this, he shall execute the PR bond, as directed in the order for releasing him on bail.

The applicant shall report to the Investigating Officer on 11th and 12th May, 2023 between 11:00 am to 1:00 p.m. At that time, he shall also furnish surety, so as to secure his release. He shall continue to report to the Investigating Officer as and when directed.

8 In the wake of the above indulgence, the impugned order seeking cancellation of the Anticipatory Bail is set aside.

The Criminal Application stands allowed in the aforesaid terms.

Needless to state if there is no compliance of the direction issued above, the Investigating Officer is at liberty to effect the arrest of the applicant.

(SMT. BHARATI DANGRE, J.)