

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

ANTICIPATORY BAIL APPLICATION NO. 2890 OF 2023

Sahil Shaikh

..Applicant.

v/s.

The State of Maharashtra

..Respondents

Dr. Uday Warunjikar for the Applicant.

Mr. S.V.Gavand, APP for the Respondent-State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 6th NOVEMBER, 2023.**

P.C.

1. This is the second application under Section 438 Cr.P.C. seeking pre-arrest bail in C.R.No. 297 of 2022 registered at V.P.Road Police Station, Mumbai, for offences under Section 364, 394, 395, 504, 506(II) and 120-B of the Indian Penal Code. The application was listed on 3.11.2023 and this Court had observed that :

“ The previous bail application for pre-arrest bail was rejected by this Court on merits. The said order was challenged before the Hon’ble Supreme Court. The Hon’ble Supreme Court had dismissed the petition with liberty to the applicant herein to surrender within two weeks from the date of the order and to apply for regular bail before the trial Court. Instead of surrendering before

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the trial Court, the applicant has once again filed and application for pre-arrest bail before this Court.”

2. The case was adjourned at the request of the learned Counsel for the applicant. Today, when the matter was called out, initially Mr. Warunjikar, learned Counsel for the applicant sought leave to withdraw the application when this Court expressed its disinclination to grant the relief. When the order was dictated and costs of Rs.20,000/- was imposed, learned Counsel for the Applicant stated that he would like to argue the application on merits. Hence, he was heard on merits of the matter.

3. Mr. Warunjikar, learned Counsel for the applicant submits that in the event the applicant complies with the statement made before the Hon'ble the Supreme Court and surrenders, then he will not be able to get pre-arrest bail. He further submits that this Court by Order dated 10.07.2023 had rejected the bail application mainly on the ground that the applicant has been identified on the basis of the CCTV footage, and further that the applicant was absconding since over a year and the investigation against him could not be completed, and particularly the remaining stolen property could not be recovered. He submits that the co-accused has been granted bail on 12.07.2023, another accused was arrested on 17.07.2023 and remainaing gold ornaments have been

recovered from him, and that he has been released on bail on 16.10.2023. He submits that the applicant is entitled for pre-arrest bail in view of this change in circumstances.

4. Learned APP submits that the previous application for pre-arrest bail was rejected on merits for the reasons recorded in para 6 of the order. He submits that the petition filed before the Hon'ble Supreme Court was withdrawn on 6.10.2023 with liberty to file regular bail application before the trial court within two weeks. Accordingly, the petition was dismissed and liberty was granted to the petitioner to surrender before the trial Court within two weeks from the date of the order. Learned APP has brought to my notice that despite the statement made before the Apex Court that the applicant would surrender within two weeks from the date of the order i.e. 6.10.2023, the present application was affirmed on 10.10.2023. Learned APP further submits that the previous orders i.e. order dated 12.7.2023 granting bail to the accused no.1 and order of remand dated 17.07.2023 against accused no.2 were passed much before the petition before the Apex Court was withdrawn. He further submits that the fact that the co-accused have been granted regular bail cannot be considered as change in circumstances to grant pre-arrest bail to the applicant whose application was rejected on merits.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. The aforesaid crime against the applicant and the co-accused was registered pursuant to the FIR lodged by Kastur Rangaji Ghanchi. It was alleged that on 27.5.2022, at about 7.30 a.m. while he along with two others were proceeding to his office at Nemane Building with a bag containing gold ornaments, one person who was standing near a two wheeler came near them and threw chilli powder on their face, and snatched away the gold ornaments worth Rs.62 lakhs at the knife point. While rejecting the previous bail application, this Court had observed that (i) the CCTV footage showed the persons involved in snatching the bag and the applicant has been identified on the basis of the CCTV footage; (ii) That the other co-accused were arrested and part of the gold has been recovered from them; (iii) A day prior to the incident, the applicant and the co-accused had stayed in Hotel Sion Residency and conducted recce of the place of the incident; (iv) the applicant was absconding for over a year and investigation against him could not be completed, and part of the remaining stolen property could not be recovered.

7. As noted above, this Order was challenged before the Apex Court, in Petition for Special Leave to Appeal (Criminal) No.12604 of 2023.

The order dated 06.10.2023 passed by the Hon'ble Supreme Court reads thus:

“ Learned counsel appearing for the petitioner seeks permission to withdraw this petition with liberty for the petitioner to apply for regular bail before the trial Court within two weeks.

The special leave petition is, accordingly, dismissed as withdrawn with liberty to the petitioner to surrender within two weeks from today and apply for regular bail before the Trial Court. If such a prayer is made, the same shall be considered by the Trial Court on its own merits.

Pending applications also stand disposed of.”

8. The records reveal that instead of surrendering before the trial Court within two weeks and applying for regular bail before the trial Court, the applicant within four days from the date of the order of the Hon'ble Supreme Court and affirmed the present application for pre-arrest bail. The reasons for filing the second bail application are stated to be that one of the accused was granted bail on 12.07.2023, and that the accused no.7 who was arrested on 17.07.2023 has been granted bail on 16.10.2023, and part of the stolen gold jewelry has been recovered from him.

9. Suffice it to say, the parameters for grant of regular bail are entirely different from the grant of regular bail. The mere fact that the co-accused have been granted regular bail cannot be a ground for grant of anticipatory bail. Hence, the applicant cannot seek pre-arrest bail on the ground of change in circumstances or parity, particularly when the previous bail application was dismissed on merits. Having withdrawn the petition filed before the Apex Court with liberty to seek regular bail, it was incumbent upon the applicant to surrender within two weeks and seek regular bail. Instead, the applicant affirmed this application within four days of the order of the Supreme Court, seeking pre-arrest bail. In the circumstances, filing of second bail application, is nothing but sheer abuse of process of law. Hence the application is dismissed with costs of Rs.40,000/- to be paid to Tata Memorial Hospital, Mumbai, within a period of two weeks.

(ANUJA PRABHUDESSAI, J.)