



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 503 OF 2024

1. Limbaji Dhondiram Ghodke
2. Piraji Dhondiram Ghodke

VERSUS

The State Of Maharashtra And Another

WITH

CRIMINAL APPLICATION NO. 1935 OF 2024
IN ABA/503/2024

Ishwari W/o Limabaji Ghodke

VERSUS

The State Of Maharashtra And Other

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Mr. U. B. Deshmukh, Advocate for Applicants

Mr. S. B. Narwade, APP for Respondents

Mr. Ajinkya Reddy, Advocate for Applicant/Informant

CORAM : R.M. JOSHI, J

DATE : OCTOBER 09, 2024

PER COURT :

1. At the outset, learned Counsel for the Informant seeks leave to assist the APP.

2. Considering the nature of offence, leave granted. Criminal Application No. 1935/2024 stands disposed of.

3. This is third bail application before this Court for anticipatory bail.

4. Learned Counsel for the Applicants submit that during the pendency of this Application on 24.04.2024 there is recovery of the bottle allegedly containing petrol which was allegedly poured on the informant on 14.01.2023 and matchstick. Thus, it is his contention that though this is third application for anticipatory bail, in view of the change in circumstance, the same deserves to be entertained.

5. Applicants apprehend arrest in connection with with C.R. No. 17 of 2023 registered with Jalkot Police Station, Dist. Latur for the offences punishable under Sections 307, 326, 324, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code.

6. FIR indicates that informant who is wife of the Applicant No. 1 and sister-in-law of Applicant No. 2 used to make grievance to her husband about her father-in-law and brother-in-law having evil eye on her. This grievance was never entertained by the husband. On the contrary, he used to abuse and beat her. It is stated that on 14.01.2023 the husband had abused and beaten her with fist and kick blows. There

is allegation that father-in-law caughthold of her and her husband poured petrol on her person. Brother-in-law brought matchstick to set her on fire. At that time, co sister of informant came to the spot and she prevented them on setting informant on fire. Thereafter, the clothes wore by informant at that time were burnt by the co-sister and mother-in-law of the informant. It is alleged that on next day i.e. 15.01.2023 she had called her parents and brother to her matrimonial home wherein they were assaulted by Applicants and co-accused.

7. Learned Counsel for the Applicants submit that charge-sheet was filed in this case on 04.07.2023 and thereafter, present application came to be filed wherein interim relief was granted by this Court on 22.04.2024. Pursuant thereto, there is recovery of the petrol bottle and matchstick done at the instance of Applicants. Thus, it is his contention that this amounts to substantial change in circumstance to entertain the application. It is his submission that in view of the fact that charge-sheet is filed and there is recovery of articles at the instance of accused, further custody of the Applicants is not called for.

8. learned Counsel for the Informant strenuously opposed the application by pointing out that this Court by passing reasoned order dated 20.06.2023 in ABA No. 304/2023 has rejected the application for anticipatory bail and the said order is confirmed by the Hon'ble the Supreme Court in Special Leave to Appeal (Cri) No.8743/2023. He also submits that at the time of filing of the application, there was no change in circumstance and as such, the application cannot be entertained in view of the settled position of law. He also drew attention of the Court to the observations made by this Court as well as Sessions Court while rejecting the successive applications for bail. It is his submission that having regard to the nature of offences and seriousness thereof, it is not a fit case for anticipatory bail. He also made grievance about the Applicants going absconding for the period of more than a year and it is only after the interim relief granted by this Court, they appeared before the investigating officer. This, according to him, becomes ground for rejection of the application.

9. Learned APP opposed the application on the ground of there are statements against the Applicants showing their involvement in the incident of 14.01.2023 as well as 15.01.2023. It is his submission that the learned Additional Sessions Judge while rejecting the bail has observed that after the incident, accused were absconding for a long period and in view of the judgment of the Hon'ble Supreme Court in case of Prem Shankar Prasad vs. The State of Bihar and Another, Criminal Appeal No. 1209/2021, the present application deserves to be rejected.

10. There is no dispute about the fact that mere filing of the charge-sheet does not amount to change in circumstance to entertain successive bail applications. Though, in the instant case at the time of filing of the application there was no change in circumstance, however, before deciding present application and on the basis of grant of interim relief, there is recovery done at the instance of the Applicants and this certainly amounts to substantive change in circumstances. Question before this Court as to whether such recovery can be ignored and it could not be called

as change in circumstance. In considered view of this Court, it would be too technical view to adopt that the change in circumstance is ignored on the ground that the change occurred during pendency of application. In view of substantial change in circumstance before deciding this application, same is entertained.

11. Previous bail application was rejected by this Court on 20.06.2023 whereas charge-sheet is filed on 04.07.2023. It is thereafter on 22.04.2024 in the present application interim relief was granted by this Court to the Applicants. On 24.04.2024 pursuant to said interim relief, there is a recovery of petrol bottle as well as matchstick under panchnama. A query was raised to the learned APP to show any reason for which custody of the present Applicants is required. Nothing in this regard was pointed out but seriousness of the crime is cited.

12. No doubt, offence is serious in nature as observed by this Court in order dated 20.06.2023. However, now with the change in circumstance, there is no reason or justification for their custodial

interrogation after recovery of articles and conclusion of investigation after filing of the charge-sheet.

13. In so far as allegation of the prosecution about abscondence of the Applicants is concerned, admittedly no proceedings under Sections 82 & 83 of the Code of Criminal Procedure are initiated and Applicants are not declared absconded by any competent Court of law.

14. As far as the judgment of the Hon'ble Supreme Court cited supra, therein proceedings were initiated under Section 82 and 83 CrPC against accused and the said fact was ignored by the High Court. In respectful view of this Court, the said judgment has no application to this case. Apart from this, it is pertinent to note that Applicant No. 1 is the member of armed forces and, therefore, it was very well possible for investigating agency to take steps for his custody. However, there is no evidence showing that investigating agency has taken any steps to secure presence of the Applicants.

15. Since the investigation is complete with filing of charge-sheet, Applicants custody is not necessary. They cannot be kept behind the bar by way of pre-trial sentence. Hence, application is allowed by confirming interim order dated 22.04.2024.

(R.M. JOSHI, J.)