



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO. 5020 OF 2024
IN APEAL/1056/2024 WITH CRIMINAL APPEAL NO. 983 OF 2024

BALU BHANUDAS KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicant : Mr. Narwade Narayan B.
APP for Respondents/State : Mr. V.M. Jaware
Advocate for R/3 in Appeal : Mr. Adinath Jagtap
.....

CORAM : Y.G. KHOBRAGADE, J.
DATE : 19.12.2024

PC.:-

1. Heard Mr. Narwade the learned counsel appearing for the Appellant/Applicant, Mr. Jaware the learned APP for the State and Mr. Jagtap the learned counsel appearing for the Informant/Respondent No.3 in Criminal Appeal.

2. Needless to say that, the present Applicant/Appellant has filed Criminal Appeal No.1056/2024 and prayed for anticipatory bail in Crime No.0614/2024 registered with Karjat Police Station, Tq. Karjat, Dist. Ahmednagar dtd.08.10.2024 for the offences punishable U/Sec.118(1), 126(2), 189(2), 191(2), 190, 352, 351(2) of B.N.S., 2023 and U/s. 3(1) (r), 3(1) (s), 3(2) (va) of S.C. & S.T. (Prevention of Atrocities) Act, 1989. The

applicant filed an application for grant of ad-interim anticipatory bail during pendency of the appeal.

3. On 14.12.2024, this Court passed the following order:

“1. By the present Appeal under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Appellant prays for anticipatory bail in Crime No.0614/2024, registered with Karjat Police Station, District Ahmednagar, for the offence punishable under Section 118(1), 126(2), 189(2), 191(2), 190, 352 and 351(2) of the Bhartiya Nyaya Sanhita 2023 read with Section 3(1) (r), 3(1) (s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Issue notice to the Respondents, returnable on 08.01.2025.

3. The learned APP waives service of notice on behalf of Respondent Nos.1 and 2.”

4. During pendency of the appeal for anticipatory application, the present Applicant/accused has filed present application and prayed for ad-interim anticipatory bail for one day i.e. on 22.12.2024 for attending the marriage ceremony of his nephew Mr. Sumit Nathu Kale scheduled on 22.12.2024 at about 12.45 hours at Manjusha Lawns, Kuldharan, Tq. Karjat, Dist. Ahmednagar.

5. The learned counsel appearing for the Applicant relied on the order dated 24.10.2024 passed by the Coordinate Bench of this Court in Anticipatory Bail No.1580/2024 (Kalim Haji Shaikh V/s. The Sate of

Maharashtra & Ors.), wherein the accused was granted anticipatory bail. The order reads as under:

“1. Learned counsel for the applicant seeks anticipatory bail to the extent of Kalim Haji Shaikh in ABA No. 1580/2024 only on the ground that his son’s marriage is scheduled to be held on 4th November, 2024.

2. Learned APP though opposed the grant of such interim protection, this Court is of the view that having regard to the fact that there is marriage of applicant- Kalim Haji Shaikh’s son, only for this reason his liberty is protected till 5th November, 2024. Hence, the following order:

ORDER

(i) Till 5th November, 2024, in the event of arrest of applicant- Kalim Haji Shaikh in connection with Crime No. 662/2024, registered with Police Station, Dist. Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar for the offence punishable under Sections 352, 351(3), 191(3), 191(2), 190, 189(2), 118(1), 115 of the Bharatiya Nyaya Sanhita, 2023 and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, he shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

(ii) He shall attend the concerned police station once in a week.

(iii) He shall not contact the witnesses directly or indirectly.

(iv) He shall not interfere with the evidence in any manner whatsoever.

(v) He is further directed to cooperate the investigating agency for further investigation.

(vi) Learned APP to communicate this order forthwith to concerned police station.

3. It is clarified that this order has not been passed on merit and

as such the same shall not be extended beyond 5th November, 2024. The applicants shall be heard and decided on merit on next date of hearing.

4. *Stand over to 14th November, 2024.”*

6. Needless to say that above order came to be passed by the Co-ordinate Bench of this Court while exercising discretionary powers, therefore, it has no binding nature.

7. Section 438 of Cr.P.C. provides for grant of bail on apprehension of arrest. Sub-section 1A and 1B of Section 438 provides as under:

“1A. Where the Court grants an interim order under Sub-Section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

1B. The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice. [Substituted by Act 25 of 2005, Section 38, for sub-Section (1). Prior to its substitution, sub-Section (1) read as under :- [(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this Section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

8. However, no discretionary powers are conferred upon this Court to grant ad-interim anticipatory bail for a period of one day to attend the marriage ceremony and to restrain the I.O. not to arrest the

applicant/accused. The Applicant/accused is not yet arrested and he is absconding. On face of record it appears that on 08.10.2024 a Crime No.0614/2024 registered with Karjat Police Station, Tq. Karjat, Dist. Ahmednagar dtd.08.10.2024 for the offences punishable U/Sec.118(1), 126(2), 189(2), 191(2), 190, 352, 351(2) of B.N.S., 2023 and U/s. 3(1) (r), 3(1) (s), 3(2) (va) of S.C. & S.T. (Prevention of Atrocities) Act, 1989 and since then the applicant accused absconding. Sec. 18 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 creates bar for application of Sec. 438 of Cr.P.C. The Investigating Officer can not be restrained from arresting the accused during the investigation.

9. Since the application for ad-interim anticipatory bail is pending and it is kept for consideration on 08.01.2025 as per convenience of the Applicant/Appellant, therefore, to my view present application for ad-interim anticipatory bail is not maintainable. Therefore, considering the nature of crime, the Applicant is not entitled for ad interim anticipatory bail, hence, the application is hereby rejected.

[Y.G. KHOBRADE, J.]