

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

965 ANTICIPATORY BAIL APPLICATION NO.154 OF 2021

SHANTANU SHIVLAL MULUK

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Jadhav, Advocate a/b Mr. R.P. Patwardhan, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th FEBRUARY, 2021.

PER COURT :

1 Heard learned Advocate appearing for the applicant. Learned APP waives notice for respondent/State. The applicant is seeking transit anticipatory bail in connection with Crime No.49/2021 registered at Police Station, Special Cell, New Delhi, for the offence punishable under Section 153-A and 120-B of the Indian Penal Code.

2 The learned Advocate for the applicant submits that the applicant is resident of Beed and the offence has been registered at New Delhi. It would take time for him to reach to New Delhi and engage an Advocate and to file an application for anticipatory bail. He also submits that

the matter pertains to the three disputed farmers' laws , which was introduced as an ordinance. The farmers are protesting since September, 2020. Some online foundations, who are supporting the protests by farmers had come together. Indian environmental and Farmer's co-alliation was joined by XR India. Present applicant is one of the founder member and it is stated that XR India is working for environment for long time. A platform was created. Various information was displayed on ongoing protest. The learned Advocate for the applicant further submitted that later on a platform has been created, which is now known as Took Kit, wherein one could get at one place, links to all the movements and protests and the links to the website of the participating foundations. It was transpired that one Ask India Why Foundation was handled by poetic justice foundation from Canada. There was a link to Ask India Why Foundation page on the took kit and it is stated that once that page was opened there was link to the poetic justice foundation, and once that page was opened there was a link having reference to the Khalistan movement and now the State is calling all those activities as terrorists activities and under those circumstances the Delhi police have lodged First Information Report against unknown persons. The applicant is apprehending his arrest in connection with the said offence. He requests that sufficient time be given to approach the competent Court for seeking appropriate relief.

3 Learned APP has taken objection about filing of the application in this Court, the jurisdiction of this Court and also the fact that even the copy of the FIR has not been annexed in order to come to the conclusion that the applicant has any kind of apprehension of arrest. It is also submitted that if the applicant is having apprehension of arrest at the hands of Delhi Police, then the Delhi Police ought to have been made party to the proceedings. Reliance has been placed on the decision by this Court at Principal Seat in **Augustine Francis Pinto and Others vs. The State of Maharashtra and Others, MANU/MH/2187/2017**, wherein it has been held that jurisdiction for control and inquiry of Criminal Courts should be local commission of crime and not residence of accused nor place where he might choose to reside and found in other part of country. Under the facts of the case before the Court then, it was held that the petitions for transit anticipatory bail were held to be not maintainable.

Reliance was placed on the decision in **Sandeep Sunilkumar Lohariya vs. Jawahar Chelaram Bijlani and Suresh and Others**, [order dated 01.08.2013 passed in Special Leave to Appeal (Cri.) No.4829 of 2013] by Hon'ble Supreme Court.

He further submitted that the observations have been made in **Augustine Francis Pinto's** case that in view of **Sandeep Sunilkumar Lohariya's**

case the view expressed by the Division Bench in **N.K. Nayar and others vs. The State of Maharashtra [MANU/MH/0534/1985]**, does not hold the ground, and therefore, relying upon **Sandeep Lohariya's** case (supra) and **Augustine Francis Pinto's** case (supra) he prayed for the rejection of the bail application.

4 At the outset, it is to be noted that the apprehension of arrest is the key factor, that is, required to be considered in such applications and even in catena of Judgments, the Hon'ble Apex Court has stated that filing of copy of the FIR is not mandatory. The applicant in the application has given reasons as to why he is apprehending his arrest and that is sufficient. The FIR is lodged at New Delhi and any regular application for anticipatory bail under Section 438 of the Code of Criminal Procedure would be considered by Delhi High Court, and therefore, this Court cannot go into any of the merits of the case. The only fact that is required to be considered as to whether the applicant can be granted liberty by way of transit bail to approach to the competent authority for seeking appropriate relief.

5 Applicant is apprehending his arrest at Beed. It is submitted that officers from Delhi Police are already in Beed. They will have to take help of local police for any operation to be conducted in the investigation at Beed. Under such circumstance, application cannot be rejected only on the ground

that Delhi Police are not party to this application. The purpose of the bail application would itself get frustrated.

6 In **Augustine Francis Pinto**'s case the observations those were made by Hon'ble Apex Court in its order dated 14.06.2013 were considered. The said order passed by Hon'ble Apex Court is made available by learned APP. Following observations were made by the Hon'ble Apex Court -

“It is difficult to comprehend under what provisions and under what authority of law such an application was even registered by the High Court of Madhya Pradesh. In our view it is an absolutely shocking order which has been brought to the notice of this Court, hence we deem it appropriate to direct the Petitioner-State of Maharashtra as also the Petitioner-complainant/son of the deceased to implead the High Court of Madhya Pradesh in these petitions. Thereafter a notice be issued to the High Court of Madhya Pradesh through the Registrar indicating to file reply as to how the bail application of the respondent no.1/accused was even registered by the High Court before it was taken up by the Bench and also as to whether the Bench was apprised of the fact of rejection of his anticipatory bail application by the High Court of Bombay, which was upheld by the Supreme Court of India on two occasions.”

But thereafter the said matter was listed for further arguments on 12.07.2013 before Hon'ble Supreme Court. Under those circumstances upon the query made to learned APP he submitted that he could get the last

order from the website of the Apex Court in connection with the said case was passed on 01.08.2013, wherein following observations have been made.

“The order passed by the High Court was in regard to a transit bail and the observations made by this Court in the order dated 14th June, 2013 were with regard to anticipatory bail and hence the observations made by this Court in the order dated 14th June, 2013 or in any other order passed by this Court in these matters, will not prejudice in any way the claim of the respondent No.1 for either temporary or regular bail before the Trial Court or the High Court which may be decided on its own merits.

We also make it clear that observations in the order passed by this Court on 14th June, 2013 or in any other order in these cases will also not cause any prejudice to the claim of any other accused in this matter for anticipatory or regular bail before the High Court or any other appropriate Court.

The special leave petitions as also the criminal miscellaneous petitions stand disposed of.

W.P. (CRL) No.83 of 2013.

List this writ petition after two weeks.”

7 It will not be out of place to mention here that in the order passed on 14.06.2013 by the Hon'ble Supreme Court the respondent No.1-accused therein was directed to surrender before the Trial Court in State of Maharashtra and that order came to be passed in view of the observation that the application for anticipatory bail filed by that accused was rejected by this

Court and that rejection was upheld by Hon'ble Supreme Court on two occasions. But then in the order dated 01.08.2013 it has been mentioned that in view of the said order dated 14.06.2013 the respondent No.1 had surrendered, and therefore, the Special Leave Petitions have become infructuous.

8 Facts before Hon'ble Supreme Court in Sandeep Lohariya's case were that the offence under Section 302, 120-B read with Section 34 of the Indian Penal Code and Section 3 and 25 of the Indian Arms Act took place at Police Station, Washi, Navi Mumbai, Maharashtra. Then the respondent No.1 (accused) before Hon'ble Supreme Court had approached this Court and his application for anticipatory bail was rejected on 25.02.2013. The said order was upheld by Hon'ble Supreme Court in Special Leave Petition (Cri.) No.2790 of 2013 dated 29.04.2013. Thereafter, again second Special Leave Petition also came to be dismissed on 13.05.2013. It appears that by suppressing those facts the accused had filed application for transit anticipatory bail which came to be entertained by High Court of Madhya Pradesh. No doubt, it is observed by Hon'ble Supreme Court that, *"Thereafter, the respondent no.1/accused appears to have filed an application for anticipatory bail in the nature of transit bail, which in our view has no provision under the Code of Criminal Procedure, 1973."*

9 Though the observations of Hon'ble Supreme Court are binding on this Court, here in view of the fact that the matter was adjourned and then Hon'ble Supreme Court while passing further order in the same matter observing that, "we also make it clear that observations in the order passed by this Court on 14th June, 2013 or in any other order in these cases will also not cause any prejudice to the claim of any other accused in this matter for anticipatory or regular bail before the High Court or any other appropriate Court." ; to my mind, has kept the said point open.

10 According to my view, the law laid down by the Division Bench of this Court in **N.K. Nayar's** case (supra) would then be applicable, wherein it has been observed -

“While considering the question as to whether the provisions of Section 438 of the Code of Criminal Code, 1973 can be utilized by this Court when the case or the contemplated criminal proceedings would be in some other State, has held that, if arrest is likely to be effected within the jurisdiction of this Court, the concerned person should have the remedy of applying to this Court for anticipatory bail even if offence might have been committed in some other State. It is further observed that, consequently this Court would have jurisdiction if a person is likely to be arrested at a place within the jurisdiction of this Court.”

11 Further, recently in **Aparna Purohit vs. The State of Maharashtra [Criminal Anticipatory Bail Application (ST.) No.1468 of 2021]** this Court at Principal Seat passed an order on 20.01.2021 granting transit anticipatory bail to the applicant therein. After the decision in Augustine Pinto's case also transit anticipatory bail is granted by this Court. It appears that order passed by Hon'ble Supreme Court in **Sandeep Lohariya's** case on 01.08.2013 was not brought to the notice of this Court in **Augustine Francis Pinto's** case. Therefore, without adjudicating the matter on merits, just to enable the applicant to approach the competent Court for seeking appropriate relief, the applicant can be granted relief as prayed. Hence, following order.

ORDER

1 In the event of arrest of the applicant in connection with Crime No.49/2021 registered at Police Station, Special Cell, New Delhi, for the offence punishable under Section 153-A and 120-B of the Indian Penal Code, the applicant be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or more sureties in the like amount.

2 This protection is granted for a period of ten days from today to enable the applicant to approach the competent Court for seeking

appropriate relief.

- 3 Application stands disposed of accordingly.
- 4 All concerned will act on authenticated copy of this order.

(Smt. Vibha Kankanwadi, J.)

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