

(2016) 07 BOM CK 0178

In the Bombay High Court

Case No : Anticipatory Bail Application No. 957 of 2016 with Criminal Application No. 444 of 2016

Ajit Sonbhau Gawade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 323, 376, 506

Citation : (2016) 3 AIRBomRCri 428

Hon'ble Judges : A.M. Badar, J.

Bench : Single Bench

Advocate : Mr. A.P. Mundargi, Senior Advocate i/by Mr. Gaurav Jachak, Advocate, for the Applicant; Mrs. Veera Shinde, APP, for the Respondent-State; Mr. S.R. Borulkar, i/by Rajendra Anbhule, Advocates, for the Intervener

Final Decision : Disposed Off

Judgement

A.M. Badar, J.— Heard the learned Senior Counsel for the applicant and the learned APP.

2. Admit.

3. By consent of the parties, taken up for final hearing.

4. This application filed under Section 482 of the Code of Criminal Procedure, by applicant, who is original accused in Crime No.70 of 2016, registered with police Station, Shivaji -Nagar, Pune, for offence punishable under Section 376, 323, 506 of the Indian Penal Code, challenging the order dated 12.5.2016, in Criminal Misc. Application No.113 of 2016, passed by the learned Additional Sessions Judge, Pune, thereby cancelling the bail granted to the present applicant in above crime on 23.03.2016.

5. Heard the learned Senior Counsel appearing for applicant /accused. By taking me through the chronology of the events after registration of F.I.R., the learned

Senior Counsel submitted that initially after registration of Crime No.70 of 2016, on 11.3.2016, at Shivaji Nagar Police Station, Pune, despite filing of Anticipatory Bail Application on 14.3.2016, there was no interim protection in favour of the present applicant. The learned Senior Counsel submitted that during the pendency of anticipatory bail application in that crime on 17.03.2016 crime No.56 of 2016 came to be registered against the present applicant/accused at Vishrantwadi Police Station, Pune, for the offence punishable under Sections 306, 511, 506 read with Section 34 of the Indian Penal Code. The allegations in the F.I.R. are that she attempted to commit suicide by consuming sleeping pills. Thereafter on 23.3.2016, Anticipatory Bail Application in Crime No.70 of 2016 filed by the present applicant came to be allowed.

6. The learned Senior Counsel appearing for the applicant/accused argued that from 24th March, 2016 to 27th March, 2016, there were holidays to the Courts and therefore, the applicant could not apply for anticipatory bail in the subsequent crime No.56 of 2016. As such he could not attend the police station on 24.03.2016. According to the learned Senior Counsel on 28.3.2016, the applicant applied for anticipatory bail in crime No.56 of 2015 and ultimately ad-interim anticipatory bail came to be granted to him on 25.3.2016 which ultimately came to be confirmed on 4.4.2016.

7. The learned Senior Counsel pointed out complaint-application made by the informant/prosecutrix against the Presiding Officer of the Court, during the pendency of proceeding for cancellation of Anticipatory Bail filed by the State. The learned Senior Counsel submitted that on 5th April, 2016, application for cancellation of bail, came to be moved at the instance of the Investigating Officer and on 15.4.2016 complaint of the Presiding Officer came to be made by the informant/prosecutrix to this Court whereby enquiry of the Presiding Officer of the Court was sought.

8. The learned Senior Counsel argued that anticipatory bail of applicant was sought to be cancelled on the ground that he failed to comply the terms and conditions imposed by the learned Additional Sessions Judge while releasing him on anticipatory bail in Crime No.70 of 2016. According to the learned Senior Counsel, the applicant could not attend the police station on the given dates as he was falsely implicated in another crime at the instance of the present informant and he could not apply for bail in that crime due to holidays to the Court. The learned Senior Counsel submitted that as directed mobile phones were submitted to the Investigating Officer. In his submission, on 30.3.2016, first mobile phone was given to the police and on 15.4.2016, two hand sets which were in use of the applicant were also handed over. Out of those hand sets, one was in use of a person namely Vivek, who is relative of the present applicant and another was in use of Khaire, an employee of the present applicant. Hence according to the learned Senior Counsel, the impugned order cancelling anticipatory bail needs to be quashed and set aside.

9. I also heard the learned APP, appearing for the State. According to the learned

APP, three reports of non cognisable cases came to be lodged which are arising out of the incident in crime No.70 of 2016. By drawing my attention to those reports, the learned APP submitted that for failure to comply with the conditions, the learned Additional Sessions Judge was right in allowing application of the Investigating Officer thereby cancelling anticipatory bail granted to the applicant. The learned APP submitted that SIM cards were not handed over by the present applicant to the Investigating Officer and it amounts to breach terms and conditions.

10. I heard the learned counsel appearing for the informant/prosecutrix. He argued that due to political pressure put up by the applicant on the Investigating Officer, and despite complaint of the learned Judge to this Court by the informant/prosecutrix, the learned Judge objectively decided application and cancelled anticipatory bail granted to the present applicant. The learned counsel appearing for the informant/prosecutrix further argued that conditions in the order granting anticipatory bail are required to be considered in its true letter and spirit.

11. The learned counsel for the informant argued that the conditions for surrendering mobile phone also include condition to surrender SIM card in those phones. According to learned counsel for the informant/prosecutrix, the act of destroying SIM card amounts to tampering the prosecution evidence and therefore the learned Additional Sessions Judge rightly allowed the application filed by the Investigating Officer. The learned counsel for the informant/prosecutrix read out paragraph No.9 of the impugned order to show that same is not perverse.

12. Now, let us examine whether the impugned order of the learned Additional Sessions Judge cancelling anticipatory bail granted to the present applicant requires invocation and exercise of powers conferred under Section 482 of the Code of Criminal Procedure, by this Court. It hardly needs to emphasise that the powers under Section 482 of the Code of Criminal Procedure, are required to be exercised by this Court for securing ends of justice and for preventing abuse of process of any Court. While exercising these powers, High Court is required to form an opinion either on these two objectives of section 482 of the Code of Criminal Procedure.

13. As the anticipatory bail granted in Crime No.,70 of 2016, for the offence punishable under section 376, 235 , 506 of IPC, registered at Shivaji Nagar Police Station, Pune, is cancelled due to breach of conditions by the applicant, at the outset, it is necessary to take brief resume of the avernments of the informant/prosecutrix in the F.I.R. of the said crime.

14. The informant had reported to police on 10.3.2016 that she was having love relations with the present applicant. The informant has stated her age to be 22 years. She is serving at Budharani Hospital at Pune. She reported to police that in the year 2014, she as well as the present applicant had been to the room of friend of the applicant, where the applicant had offered spiked drink to her and

committed rape upon her. Thereafter, according to the informant, she was taken to the Park Hotel by the present applicant. At that time, according to the informant, the applicant had shown her nude video clip and assured her that he will marry her. Thereafter according to the informant, the applicant had committed repeated sexual intercourse with her from time to time. Lastly according to the informant on 10.3.2016, the applicant called her and took her to Park Hotel on the pretext of deleting video clip and then committed rape upon her.

15. As against this averments, the applicant has placed on record extract of text messages exchanged between the parties on 10.3.2016 itself. It is apposite to note those text messages.

16. The perusal of print out of the text message exchanged between applicant and informant would show that the applicant asked the informant, as to whether they should meet on the last occasion. The informant consented and informant informed the applicant that she is at the Phonix Mall and she will take sometime to come. According to the applicant, the informant replied to him in words, "Yete, thodya velan.....pajshil ka". The applicant replied, "Kay ghenar". Then as per text message, the prosecutrix/informant replied, "Tya divsi je pajli te". The text messages according to the applicant show how both parties met at hotel Park on 10.3.2016 , wherein the alleged incident of rape happened, which is subject matter of the F.I.R. Text messages allegedly exchanged between the applicant and the informant prima facie show that meeting between them at the room in Park Hotel on 10.3.2016 was rendezvous. Further text messages between them also throws light on their relationship.

17. Be that as it may, it is seen that considering entire material collected by the Investigating Officer, the learned Additional Sessions Judge was pleased go grant anticipatory bail to the present applicant in C.R.No.70 of 2016. It is apposite to reproduce the entire text of the operative order dated 23.3.2016, which reads thus :-

1. The application is allowed.
2. In case of arrest, in connection with C.r.No.70/2016 registered with Shivajinagar Police Station, Applicant accused Ajit Sonbhau Gawde be enlarged on bail on furnishing PB and SB of Rs.25,000/-.
3. The applicant is hereby directed to remain present in the police station for the investigation every alternate day i.e. on 24.03.2016, 26.03.2016, 28.03.2016 and so on between 10.00 to 1.00 till filing of charge sheet.
4. The applicant shall not tamper or hamper prosecution witnesses in any manner whatsoever.
5. The applicant will surrender his mobile phone or phones standing in his name to police for examination of the same and for investigating purpose.

6. Applicant should not leave the jurisdiction of this court till further orders.

7. Inform police station accordingly.

8. Application is disposed of".

18. Now it is apposite to note that on 11.3.2016, i.e. during pendency of anticipatory bail application in Crime No.70 of 2016, the informant/prosecutrix again lodged report against the present applicant at Vishrantwadi Police Station, Pune. It is averred in that report that there was pressure on her parents as well as on her for withdrawing earlier case and therefore, she consumed 7 to 8 sleeping pills. Her uncle came to know about this fact and he has admitted her to Budharani Hospital. It is worthwhile to note that the informant/prosecutrix though attempted to commit suicide, no offence under Section 309 of the Indian Penal Code came to be registered against her. Instead, the police chose, to register crime No.56 of 2016, against the present applicant under Section 306, 511 read with 34 of the Indian penal Code. How this offence can be made out from such a report is a serious matter to be deliberated separately.

19. It is seen from the record that thereafter the State through Investigating Officer, moved an application for cancellation of anticipatory bail granted to the applicant in Crime No.70 of 2016. A copy of that application is at page No.59. It is averred by the Investigating Officer, in the said application that on 24.3.2016, despite order of the Additional Sessions Judge, the applicant remained absent and did not co-operate the Investigating Officer, in the investigation. The applicant State further averred in that application that on 30.3.2016, the applicant/accused produced mobile hand set of Samsang Company without SIM card. It is further averred that the applicant/accused refused to produce on record other mobile as per directions of the Additional Sessions Judge. It is further averred that SIM Cards are not produced and therefore the applicant/accused had tampered with the prosecution evidence. On these two grounds confirmed anticipatory bail granted earlier to the applicant in crime No.70 of 2016 was sought to be cancelled.

20. The application filed by the State for cancellation of anticipatory bail came to be opposed by the present applicant by filing his say. After hearing parties, the same came to be allowed by the impugned order dated 12.5.2016. The learned Additional Sessions Judge gave finding that registration of another crime against the applicant cannot be a ground to remain absent in crime No.70 of 2016. Similar observations are also made in regard to the attendance of the applicant before the Investigating Officer as per directions of the Court. The learned Additional Sessions Judge, further observed that the applicant had also committed breach of condition No.4 which is regarding tampering or hampering prosecution witnesses, in the words of the learned Additional Sessions Judge. To come to this conclusion, reports of non cognisable cases were relied by the learned Sessions Judge. Third ground for cancellation of anticipatory bail is production of mobile phones without SIM Cards.

21. I have already reproduced the conditions imposed by the learned Additional Sessions Judge while granting anticipatory bail to the applicant in Crime No.70 of 2016. It is basic principle of natural justice that the affected party should be aware about the case made out against him in order to enable him to meet out that case.

22. Bare perusal of the application for cancellation of anticipatory bail moved by the State , before the Additional Sessions Judge, would show that it is not alleged by the State that the present applicant in any manner tampered the evidence of the prosecution. In other words, the applicant was not required to meet out case of tampering prosecution evidence. In words of the learned Additional Sessions Judge, the condition is "Not to tamper or hamper prosecution witnesses". The perusal of the impugned order goes to show that the learned Additional Sessions Judge, considered filing of reports of non cognisable offence against relatives of the present applicant and unknown persons as one of the ground for cancellation of anticipatory bail. This approach of the learned Additional Sessions Judge is totally illegal. The application moved by the State for cancellation of anticipatory bail was not raising such ground so as to enable the applicant to meet out such case.

23. The next condition, breach of which is pressed in service and accepted by the learned Additional Sessions Judge is that of non production of SIM cards of mobile phones. The pleadings on this aspect can be found in paragraph Nos.4 and 5 of the application for cancellation of bail moved by the State before the Additional Sessions Judge. The relevant portion of paragraph Nos. 4 and 5 reads thus :-

"4. That on 24.03.2016, as per the order of this Hon''ble Court, the applicant accused remained absent and did not remained appeared before the Investigating officer and did not cooperated to the Investigating Officer in respect of the investigation. That, the station diary entry to that effect is made by the investigating officer. That, irrespective of the order of this Hon''ble Court, the applicant accused purposely disobeyed the directions of the Hon''ble Court and has committed contempt of the Court. It is further submitted that on 28.03.2016, the present applicant accused remained present at Shivajinagar Police Station, however, did not produced his phone or phones as per the order of the Hon''ble Court. As against this, the applicant accused filed an application on 23.03.2016 to the office in charge of the concerned police station stating that the mobile hand set will be produced through his mother Smt. Sunita Sonbhau Gawde. That, on 30.03.2016, the applicant accused himself produced the mobile handset of Samsung Company having IMEI No.353004070725713 without SIM Card. Moreover, the applicant accused refuses to produce on record other mobiles as per the directions of this Hon''ble Court.

5. It is, therefore, submitted that the mobile phones which are filing on record is having no SIM card, thus, the applicant accused is tampering with the prosecution evidence and for the same the order of the bail is required to be

cancelled".

24. Bare perusal of this pleading goes to show that the Investigating Officer alleged that SIM cards of mobile phones were not produced. Statement of the learned Senior Counsel to the effect that on 30.3.2016, the first mobile phone was produced before the Investigating Officer gets confirmation from the pleadings in paragraph No.4 of the application for cancellation of bail. The submission of learned Senior Counsel that on 15.4.2016 two more mobile hand sets were produced before the Investigating Officer is not controverted by the learned APP. The condition No.(5) of the order dated 23.3.2016 is in respect of surrendering mobile phones which have been standing in the name of the applicant to the police for examination of the same and for investigation purpose. It is trite that the provisions of penal statute as well as orders passed in Criminal Matters are required to be construed strictly. The perusal of the impugned order dated 23.3.2016, does not show that the applicant/accused was directed to produce SIM Cards of his mobile phones before the Investigating Officer. Nothing prevented the Investigating Officer for applying to the concerned court for imposing one more condition regarding production of SIM Cards by the applicant/accused. This Court has made a specific query on this aspect and the learned APP responded it by stating that no such application was subsequently moved by the Investigating Officer for directing the applicant to produce SIM Cards of mobile phones before the Investigating Officer. As such, for these reasons, the order granting anticipatory bail to the applicant ought not to have been cancelled by the learned Additional Sessions Judge, by passing the impugned order.

25. Now comes the absence of the applicant/accused before the Investigating Officer, in terms of order dated 23.3.2016. It is averred in the application for cancellation of anticipatory bail, by the State that on 24.3.2016 despite directions, the applicant/accused remained absent before the Investigating Officer. One will have to examine whether such absence was intentional causing hampering of the investigation. The application for cancellation of anticipatory bail is conspicuously silent about consequences of absence of the applicant/accused before the Investigating Officer on 24.3.2016. What prejudice is caused and what difficulties are suffered by the investigating Officer in investigation due to absence of the applicant before him on 24.3.2016 are not pleaded in the application filed by it. The applicant came up with reason for remaining absent on 24.3.2016 to the effect that crime No.56 of 2016 came to be registered against him on 17.3.2016 and, therefore, he was not in position to attend police station on 24.3.2016, as his liberty was not protected. This crime No.56 of 2016 came to be registered at the instance of informant/prosecutrix against the applicant. Except this absence nothing is pleaded in the application for cancellation of bail regarding subsequent conduct of the applicant.

26. In the light of the fact that the prosecutrix/informant had subsequently attempted to commit suicide and by giving her clean chit, the applicant came to be implicated in the offence punishable under Section 306, 511, 506 read with

34 of the Indian Penal Code, reason for the applicant to remain absent on 24.3.2016 will have to be appreciated. In such situation, in my considered view no over bearing importance could have been given to the fact of absence of applicant on 24.3.2016, as prima facie it is seen that efforts were being made anyhow to apprehend him.

27. During hearing of this application, one more disturbing fact came to the light of this Court. Attempt of brow beating the Presiding Officer i.e. the learned Additional Sessions Judge, at the instance of the informant/prosecutrix is reflected from the record. It is noted that on 15.4.2016, the State of Maharashtra through Investigating Officer moved an application for cancellation of anticipatory bail of the applicant granted by the learned Additional Sessions Judge. This application was ultimately decided by the same learned Additional Sessions Judge, on 12.5.2016, by passing the impugned order. It is seen that during pendency of the application for cancellation of anticipatory bail, the informant/prosecutrix made a complaint against the same Presiding Officer on 15.4.2016 and addressed it to this Court. It is seen that the day on which the State filed an application for cancellation of anticipatory bail, the informant/prosecutrix/intervener, had chosen to file the complaint of the learned Additional Sessions Judge before this Court. It is, thus, seen that when the cause was pending before competent Court, the informant/prosecutrix/intervener attempted to prejudice and to interfere with due course of judicial proceedings which were relating to the report lodged by her and consequent registration of crime against the present applicant.

28. Bare perusal of the complaint application dated 15.4.2016 shows that several allegations are made against the Presiding Officer of the Court where the application for cancellation of anticipatory bail of the present applicant was pending. Prima facie, this is nothing but, interference with due course of judicial proceedings. Upon being asked in this regard, learned counsel for the informant/prosecutrix submits that he has no instructions in this regard and he do not know as to how such application came in possession of the present applicant. The learned Senior Counsel for applicant/accused in reply submitted that copy of this complaint dated 15.4.2016 was placed on record of the learned Additional Sessions Judge, by none less but by informant/prosecutrix. The copy of the complaint made by the informant/prosecutrix/intervener against the Presiding Officer of the Court, to this Court, was on the record of the case before the said Presiding Officer when the application for cancellation of anticipatory bail in the crime registered at the instance of the informant was being heard. The learned Senior Counsel makes responsible statement, on instructions, that this complaint application dated 15.4.2016 made by informant /prosecutrix to this Court against the learned Presiding Officer Judge, was placed on record of the Presiding Officer Judge by and on behalf of informant/prosecutrix, during pendency of the Criminal Misc. Application No.113 of 2016, for cancellation of anticipatory bail by the applicant. It is, thus, clear that if statement of the learned Senior Counsel made, on instructions, is accepted that at the time of allowing application of the

State on 12.5.2016, the Presiding Officer was having complaint application made to this Court against her, on record of the case. With, this ultimately on 12.5.2016, the application of the State came to be allowed by the same Presiding Officer by cancelling the anticipatory bail granted to the applicant. Prima facie this appears to be the criminal contempt as course of justice is sought to be polluted by such conduct of the informant/prosecutrix. This act of the informant/intervener is requiring appropriate action under the Contempt of Court Act, 1971.

29. In the result, for the stated reasons, this is fit case to exercise the powers of this Court for preventing abuse of process of Court and for securing ends of justice. Therefore, the following order.

ORDER

i) The application is allowed.

ii) The impugned order dated 12.5.2016, below Exh.1 in Criminal Misc. Application No.113 of 2016,(State v. Ajit Gawade), passed by the learned Additional Sessions Judge, Pune is quashed and set aside.

iii) Issue show cause notice to Ms. Shaila Balasaheb Chore, the informant/prosecutrix i.e. complainant in Complaint dated 15.4.2016, made to this Court, as to why proceedings for committing Criminal Contempt of the Court should not be initiated against her. Notice is made returnable after eight weeks.

30. In view of disposal of main application, Criminal Application No.444 of 2016 filed by the informant/prosecutrix is disposed of accordingly.