

(2012) 12 BOM CK 0097

In the Bombay High Court

Case No : Criminal Anticipatory Bail Application No. 1207 of 2012

Mr. Chandra Kanjappa Kuchchikurve

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Criminal Procedure (Amendment) Act, 2005 — Section 1, 42
Criminal Procedure (Amendment) Amending Act, 2006 — Section 2
Penal Code, 1860 (IPC) — Section 324, 34, 504, 506

Citation : (2013) 1 ABR 674 : (2013) ALLMR(Cri) 626 : (2013) 1 BomCR(Cri) 617

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Leela D. Malu instructed by M/s. Leela D. Malu and Associates, for the Appellant; R.M. Gadhvi, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Heard Ms. Leela D. Malu, the learned counsel for the applicant, and Ms. R.M. Gadhavi, the learned APP for the State. The applicant is sought to be arrested in C.R. No. 187 of 2012, of Shahu Nagar Police Station, which is in respect of offences punishable under Sections 324, 504, 506 of the Indian Penal Code (IPC) read with Section 34 thereof. The applicant, apprehending arrest, approached the court of Sessions for anticipatory bail, but the learned Sessions Judge rejected the said application observing that it would be necessary to have the custodial interrogation of the applicant.

2. The learned counsel for the applicant submitted that all the offences, with which the applicant is charged, are bailable. But still an application for anticipatory bail was made as the police and sometimes the subordinate courts also, treat the offence punishable u/s 324 of the IPC, as "non-bailable". The learned counsel submitted that, that the said offence is bailable was canvassed before the learned Sessions Judge, who, however, in her order, did not deal with

this aspect of the matter at all. The learned counsel agrees that an anticipatory bail application cannot lie in respect of bailable offences, but urges that the correct legal position with respect to the offence punishable u/s 324 of the IPC be clarified.

3. This court had an occasion to examine whether the offence punishable u/s 324 of the IPC is "bailable" or "non-bailable" even earlier.

4. By the Code of Criminal Procedure (Amendment) Act of 2005, (Act No. 25 of 2005), extensive amendments to the Code of Criminal Procedure, 1973, (Code) were introduced. By Section 42 of the said Act, the First Schedule to the Code was amended. By Clause (f)(iii) thereof, the offence punishable u/s 324 of IPC was made "non-bailable."

5. However, the said Act did not come in force, at once. Sub section (2) of Section 1 of the said Act provided as follows :

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

By the Code of Criminal Procedure (Amendment) amending Act 2006 (Act 25 of 2006), the aforesaid Amendment Act of 2005 came to be amended. Section 2 of the 2006 Act (Act 25 of 2006), provided for amendment of Section 1 of the 2005 Act (Act 25 of 2005). By the said section, Sub section (2) of the 2005 Act was amended as follows :

2. Amendment of Section 1 of Act 25 of 2005 - In the Code of Criminal Procedure (Amendment) Act, 2005, in Section 1, in subsection (2), after the words "by notification in the Official Gazette, appoint", the words "and different dates may be appointed for different provisions of this Act" shall be inserted.

6. After the amendment, Sub-section (2) of Section 1 of the 2005 Act (Act 25 of 2005) read as under :

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Act.

7. Thus, provision was made for different dates being appointed for bringing different provisions of the said 2005 Act in force. Notifications bringing various provisions of the 2005 Act in force have been issued from time to time.

8. The question that arises is whether the provisions of Clause (f)(iii) of Section 42 of the 2005 Act have been brought in force by appointing a date therefor. It transpires that no notification giving effect to the said amendment i.e. making the offence punishable u/s 324 of the IPC "non-bailable" has been issued by the Central Government, so far.

9. If no notification giving effect to the amendment in question i.e. amendment to the Fifth Column in the entry relating to "Section 324 of the IPC", has been

issued till today, (which aspect is undisputed) it means that the offence punishable u/s 324 of the IPC, continues to be a "bailable" offence.

10. All the other offences allegedly committed by the applicant are bailable.

11. Since the offences, with which the applicant is charged, are bailable, the anticipatory bail application is not maintainable. The application is rejected with the aforesaid observations