



(1)

ACB 256.18

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 256 OF 2018

Smt. Kevalbai W/o. Bapurao Thakare,
Age: 64 years, Occu: Sarpanch of Walkheda,
R/o Walkheda, Taluka Shindkheda,
District Dhule. ... **Applicant**

Versus

The State of Maharashtra,
Through the Devpur Police Station,
District Dhule.

Mrs. Rashmi Kulkarni, Advocate for the Applicant.
Mr. A.R. Kale, A.P.P. for the Respondent/State.

CORAM : MANGESH S. PATIL, J.

**DATE OF RESERVING THE ORDER : 05.04.2018
DATE OF PRONOUNCING THE ORDER : 12.04.2018**

...

ORDER:

This is a proceeding seeking bail in anticipation of arrest of the applicant by invoking provisions of Section 438 of the Cr.PC. On 03.04.2018 the learned A.P.P. made a request apparently in view of the provision contained in Sub-Section 4 of Section 438 (State of Maharashtra amendment) which is

similar to the Sub-section 1-B of Section 438 in the (Central Code) that the applicant should remain personally present on the date of final hearing of the application.

2. The learned A.P.P. submitted that the provisions of Sub-Section 4 of Section 438 casts an obligation on the part of the persons seeking anticipatory bail to remain personally present at the time of final hearing. He would point out that the applicant has been screening herself in spite of being a lady and has been avoiding to subject herself to interrogation and subject herself to the due process of law. He would point out that already she had several times made attempts to seek anticipatory bail, twice before the learned Additional Sessions Judge and once before this Court. Still she has not surrendered before the Investigating Officer and is repeatedly trying to seek anticipatory bail. He would therefore request that she should remain present in the Court while her application for anticipatory bail is heard finally.

3. The learned advocate for the applicant submitted that there cannot be any two opinion about statutory provisions. However, the entire scheme of the provisions of Section 438 has to be examined and looked in to. A conjoint reading of all the Sub-sections of Section 438 would reveal that it is

only when the Court exercises the powers in Sub-section 2 and grants interim protection in the form of ad interim bail that further course under Sub-section 3, 4 and 5 would be available. If without extending any such interim protection the person seeking anticipatory bail is compelled to remain present in the Court at the time of final hearing on his request for anticipatory bail it would run afoul to the provisions of Section 438. In support of her submission she also placed reliance on the decision of this Court in the case of **Ashik Rameshchandra Shah & Ors. Vs. State of Maharashtra; 2010 ALL MR (Cri.) 2524.**

4. I have carefully gone through the papers, decisions cited by the learned advocate for the applicant and the provisions contained in Section 438 of the Cr.P.C. The dispute apparently is no more *res integra*. It is trite that statutory provisions have to be understood by reading it as a whole and not in pick and choose manner. The conjoint reading of all the Sub-sections of Section 438 of the Cr.P.C. would make it abundantly clear. Sub-section (1) lays down the provisions enabling the person to seek bail in anticipation of his arrest which request can be examined obviously by taking in to account various ingredients mentioned therein. Sub-Section 2 then enables grant of interim order under Sub-section 1 and simultaneously obliges the Court to fix

a date for final hearing. Sub-section 3 then lays down that when the Court grants interim relief under Sub-section 1 it shall cause notices to be issued to the Public Prosecutor intimating the date of final hearing and to enable him to extend the opportunity to be heard. Sub-section 4 then lays down that presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing and passing of the final order if the Public Prosecutor makes an application to the Court and the Court considers such presence necessary in the interest of justice. Sub-section 5 then lays down that after hearing the application for anticipatory bail finally on the date indicated in the interim order passed under Sub-section 1, after hearing the parties the interim order may be confirmed, modified or cancelled. It is thus quite clear that Sub-section 4 of Section 438 of the Cr.P.C. cannot be read in isolation bereft of the rest of the Sub-sections of Section 438. A conjoint reading of all these provisions clearly shows that the power requiring the applicant to remain personally present would be available only in the contingency, wherein, he has been extended interim protection and not otherwise. This is what has been decided and laid down by this Court in the case of **Ashik Rameshchandra Shah (supra)**. The learned Advocate for the applicant fairly conceded that the applicant would be under obligation to remain present in

obedience to such a direction by this Court at the time of final hearing and passing of the final order provided that she is granted interim relief.

5. Considering the law discussed herein above, in my considered view, when the interim relief has not been granted to the applicant, there is no ground to show that her presence is necessary in the interest of justice. The request of the learned A.P.P. cannot be considered and is accordingly rejected.

6. List the matter for final hearing on 13.04.2018.

(MANGESH S. PATIL, J.)

KAKADE