

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

CRIMINAL APPLICATION NO. 3088 OF 2015

Rohidas s/o Ramdas Rathod
Age : 55 Yrs., Occ. Cultivator,
R/o : Kutethan Tanda, Tq. Paithan,
Dist. Paithan.

.... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

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Mr. R.A.Jaiswal, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 22nd JUNE, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the parties.
2. This is an application for relaxation of condition.
3. Heard Mr. R.A.Jaiswal, learned counsel for the applicant and Mr. A.S.Shinde, learned A.P.P. for respondent – State.
4. Present applicant is accused in F.I.R. No. 116/2014 registered at police station Pachod, Dist. Aurangabad for the offences punishable u/s 307,323,504,506 of the Indian Penal Code. Applicant is accused No. 2.

Accused No. 1 Sominath Rathod and accused No. 3 Tulsabai Rathod are son and wife of the applicant and they are already released on bail. F.I.R. is lodged by Lahu s/o Uttam Chavan. According to F.I.R., religious ceremony was going on in the agricultural field of the present applicant. That time, Sominath, son of the applicant under the influence of liquor was disturbing the said function. Therefore, first informant Lahu asked Ankush to take Sominath at his house. That time, Ankush was assaulted by Sominath and Tulsabai and the applicant assaulted on Ankush by means of stone, resulting into fracture of nose and also he lost his one eye.

5. This Court on 27/11/2014 considered the application filed on behalf of the applicant for bail. This Court released the applicant on bail on he furnishing P.R. Bond of Rs. 15,000/- and also the surety. At the same time, imposed condition that the applicant should deposit Rs. 1,00,000/- in the Sessions Court.

6. Law presumes the accused to be innocent till his guilt is proved. As presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution of India. This is a dictum of Hon'ble Apex Court.

7. According to the learned counsel for the applicant, due to the onerous condition which is imposed on him to deposit Rs. 1,00,000/- and since he is unable to deposit the said amount, applicant could not be released on bail as

directed by this Court on 27/11/2014. He submitted that it is beyond the reach of the applicant to deposit said amount and, therefore, in spite of the order granting him bail, applicant is in jail.

The fact that from 27/11/2014 till today, applicant could not get himself released on bail, said fact itself suggest that he is not in a position to deposit the said amount. That fact reminds me the authoritative pronouncement of the Apex Court reported in **Sandeep Jain Vs. National Capital Territory of Delhi, (2000) 2 Supreme Court Cases 66.**

Para No. 4 of the said Judgment reads as under :-

“ We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs. 2 lakhs ? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground

to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge sheeted by the police ”.

9. Learned counsel for the applicant submits that the applicant is ready to deposit Rs. 50,000/- in stead of Rs. 1,00,000/-. He submitted that he has received such instructions through the relative of the applicant.

10. Looking to the aforesaid aspect, this Court is ready to exercise its discretion in favour of the applicant by relaxing the condition.

11. Hence, I pass the following order :

- (i) Criminal Application is allowed.
- (ii) The condition imposed by this Court on 27/11/2014 in Criminal Application No. 6172 of 2014 directing the present applicant to deposit Rs. 1,00,000/- in the Sessions Court in the crime or in the case pending in the Sessions Court as a condition for releasing him on bail is relaxed. In stead, the applicant shall deposit Rs. 50,000/- in the Sessions Court in the crime or in the case pending in the Sessions Court.
- (iii) All other conditions in the Order dated 27/11/2014 shall remain as it is.
- (iv) Rule is made absolute.

[V.M.DESHPANDE, J.]