

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 417 OF 2015

Bhanudas Eknath Kotkar ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Mahesh Jethmalani, Senior Advocate a/w. Mr. Harshad Nimbalkar, Mr. Satyan Nimbalkar, Mr. Nilesh Tribuwan, Salini Saxena, Mr. Rishi Ghorpade and Mr. Shailesh Mhaske i/b. Mr. Satyam H. Nimbalkar for the applicant.

Mr. Arfan Sait, APP for the State.

I.O. Mr. Ashok Dhekane, P.I., I/c. Dy. S.P. City Division, Ahmednagar present.

CORAM: **MRS. MRIDULA BHATKAR, J.**
DATE : **JULY 8, 2015**

P.C.:

This Application is moved for regular bail. This is a third Bail Application and the applicant/accused is facing charges under sections 302, 201, 120B, 466, 474 r/w. 34 of the Indian Penal Code. This Bail Application is made only on a limited ground. The second Bail Application was rejected by this Court on 14th July, 2014 and thereafter trial commenced. Till today, 37 witnesses are examined and 30 witnesses are yet to be examined.

2. The learned senior counsel for the applicant/accused submitted that he has moved this Application for bail because speedy trial is denied to the applicant/accused and there is no progress in the matter, so his Bail

Application is to be heard. He narrated the details in respect of appointments of the prosecutors. In the beginning, DGP Shridhar Mane was conducting the matter as a prosecutor. After his superannuation on 4th September, 2014, DGP R.Y. Ghumare started conducting the matter from 5th September, 2014 to 18th January, 2015. The original complainant Shankarrao Vithalrao Raut had moved an application for appointment of a Special Prosecutor. However, in between, Advocate Nimbalkar, ADGP worked as a prosecutor from 19th January, 2015 to 27th January, 2015. The original complainant found that the work of prosecution was not satisfactory, there were many lapses and the witnesses turned hostile, so he moved an Application to the Government praying that in place of DGP Ghumare, retired DGP Shridhar Mane be appointed. The complainant also expressed his inability to make payment for Special Prosecutor. In between, Advocate Ajay Misar, ADGP started working as a prosecutor in the said place and according to the complainant, he was doing a good job, on 1st April, 2015 the Government sent an order of appointment of retired DGP Shridhar Mane as Special Prosecutor, who was in between appearing privately for the informant and he has filed his Vakalatnama for him. Shridhar Mane took over the charge as a Special Prosecutor and the matter proceeded from 1st April, 2015 to 23rd June, 2015. The learned senior counsel for the applicant further submitted that on 23rd June, 2015 original informant applied to the Law and Judiciary Department for change

of Special Prosecutor Shridhar Mane. The copy of the said application was tendered in the Sessions Court. The said copy is now placed before this Court. In the said Application addressing to the Secretary, Law & Judiciary, the original complainant has prayed that he has lost faith in Shridhar Mane and in his place, Advocate Ajay Misar, ADGP is to be continued. Therefore, Shridhar Mane filed an Application (Exhibit 448) before the Presiding officer informing that as the informant has lost faith in him, he cannot conduct the case.

3. The learned senior counsel after giving details of the developments which has taken place during the trial in respect of change of prosecutor, submitted that as on today, there is no prosecutor to take over the matter and therefore, the case is standstill since 23rd June, 2015, which has caused great prejudice to the accused, who is in the prison since last many months. Today, the learned senior counsel submitted that all the eye witnesses are examined. There is no evidence against the applicant/accused except the evidence of the complainant and his wife. Under such circumstances, he submitted that his Bail Application is to be heard.

4. Learned APP opposed the Application. He submitted that there is evidence against the applicant/accused. It is a case of murder and yet 30

witnesses are to be examined and evidence of 37 witnesses are already on record. He submitted that this Court has already rejected two Bail Applications of the applicant/accused. Under such circumstances, this cannot be a ground to entertain the Bail Application and the same is to be rejected.

5. This Court has rejected the first Bail Application of the applicant/accused prior to filing of charge sheet and after filing of the charge sheet, another bail application was filed and was rejected on merits. There is no need to entertain this Bail Application. However, it appears that a very peculiar situation has taken place in the midst of trial before the learned Sessions Judge who is in-charge of this case. Already 37 witnesses are examined. Considering the stage of the trial, I am not inclined to consider this Bail Application. However, the complainant has moved an Application to the Law and Judiciary Department on 23rd June, 2015 for change of Special Prosecutor, pursuant to that, Special Prosecutor Shridhar Mane submitted an Application on 25th June, 2015 that it is not possible for him to go ahead with the matter and therefore, requested to adjourn the matter. On perusal of the Application (Exhibit 448), it is found that the learned Presiding Officer has directed the other side to give say and the applicant/accused has taken time to file detailed say as it is required and has sought time. On query, I am informed by the

learned counsel Mr. Nimbalkar, who is assisting the learned senior counsel Mr. Jethmalani, that no say is filed by the applicant/accused to Application (Exhibit 448). The learned Judge has asked Advocate Mr. Misar, ADGP to take over the matter as a Prosecutor, however, he has orally refused to go ahead with the matter.

6. Considering all these facts and developments in the case, I am of the view that learned Sessions Judge to proceed with the trial preferably on day-to-day basis as per Cr. P.C. and DGP is directed to appoint Public Prosecutor if possible, who is conversant with the matter and proceed with the matter and complete the entire evidence preferably statement under section 313 till 31st August, 2015. Hence, I dispose of this Bail Application with following order:

(i) The learned trial Judge is hereby directed to go ahead with the matter preferably on day-to-day basis and complete the entire evidence before 31st August, 2015.

(ii) If at all any adjournment is obtained and granted, the Presiding Officer shall record it at whose instance the adjournment is sought.

(iii) If recording of entire evidence is not completed till 31st August, 2015, then the applicant/accused is given liberty to apply for bail before this Court.

6. Registrar (Judicial) to send the copy of this order to the Law & Judiciary Department and to the Presiding Officer through fax.

(MRS.MRIDULA BHATKAR, J.)