

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 730 OF 2015

Rakesh Machhindra Jadhav	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Vikas B. Shivarkar, Advocate for the applicant.
Mr. D.P. Adsule, APP for the State.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 9th April, 2015.

P.C.

This Application is moved for bail, as the applicant/accused is facing charges under section 406, 420, 467, 468, 471 r/w. 34 of the Indian Penal Code and 66 A(a) (b)(c), 66 C & 66D of the Information Technology Act.

2. The learned counsel for the applicant/accused submitted that the applicant/accused is in prison since 8th December, 2014. He was given Magistrate custody from 8th December, 2014 till 16th December, 2014. Thereafter, the applicant was given police custody till 22nd December, 2014. Again he was given police custody till 26th December, 2014. The learned counsel made legal submissions that police custody should have been given for first 15 days as per the law laid down in the case of **Central Bureau of Investigation, Special Investigation Cell, New**

Delhi vs. Anupam J. Kulkarni, reported in (1992) 3 SCC 141. He also relied on the paragraph 8 of the said case. The learned counsel also relied on the judgment of Supreme Court in the case of **Budh Singh vs. State of Punjab, reported in (2000) 9 SCC 266.** He submitted that on merits the applicant has good case and therefore, he should be released on bail.

3. Learned APP while opposing this Application pointed out that the submission in respect of giving advantage to the applicant under sub-section (2) of section 167 of Cr. P.C. are not tenable, as charge sheet was filed against the accused under section 299 of the Cr. P.C. before his arrest as he was absconding nearly for 3 years. In support of his submissions, learned APP relied on the judgment of the Supreme Court in the case of **Dinesh Dalmia vs. CBI, reported in (2007) 8 SCC 770 especially paragraph 39.** Learned APP also relied on the reply dated 16th February, 2015 of the Additional Prosecutor which was submitted at the time of hearing of Criminal Bail Application No. 43 of 2015 before Khed Additional Sessions Judge, Pune. The said prosecutor has mentioned in the said reply that the trial has already commenced and the complainant was in the box.

4. The submissions made by learned APP on the point of giving

advantage to the applicant/accused on releasing him on bail under sub-section (2) of Section 167 of Cr. P.C. are not available when charge sheet is filed, are correct. I place reliance on paragraph 39 in the case of **Dinesh Dalmia** (*supra*), which is as under:

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of section 173 of the Code.”

5. The trial is commenced and the informant was in the box on 16th February, 2015, i.e., nearly 2 months back and, therefore, it is not necessary to go into the merits of the case, as the trial has begun. Hence, the Application for bail is dismissed.

(MRS. MRIDULA BHATKAR, J.)