

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.733 OF 2015

Pramod Bistur Patil .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.S.V. Marwadi i/b Mr.S.S.Redekar, Advocate for the applicant.
Mrs.Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 20th APRIL, 2015

P.C. :

1 Heard Mr.S.V. Marvadi, learned counsel for the applicant. Heard Mrs.Anamika Malhotra, learned APP for the State.

2 The applicant's previous application for bail was rejected by me (Bail Application No.1092/13 decided on 6th August 2013).

3 Now, the prayer for bail is renewed primarily on two grounds. The first is that the co-accused in this case – Naffis Chotu Havari – has subsequently been released on bail by this Court (Bail Application No.1511/13) decided on 24th October 2014) (Coram U.V.Bakre, J). The second ground is that the evidence that has been adduced before the trial court, weakens the

case of the prosecution, as had been put forth before the court on the basis of the charge-sheet. Mr.Marwadi fairly conceded that though the co-accused Nafis Havari has been released on bail by this Court, his case is not on par with that of the present applicant. He, however, submitted that bail was denied to the applicant only on the ground that the bullet that was retrieved from the dead body, had been fired from a fire-arm which was recovered at the instance of the applicant. Mr.Marwadi submits that now the evidence of one Sadanand Pandurang Kale (PW 3) has been recorded by the trial court, and his evidence renders the theory of recovery of the weapon of assault from the applicant, as put forth in the charge-sheet, doubtful.

4 Mr.Marvadi also submitted that this is to be viewed in the light of the fact that there is some discrepancy in the matter of timings recorded in the different panchnamas, which purportedly relate to two different disclosure statements made by the applicant and the co-accused, and the recovery of incriminating articles pursuant thereto.

5 I have considered the matter.

6 It is a fact that about two years have passed since the rejection of the applicant's previous bail application. It also appears to be a fact that now evidence has been adduced, and as such, the trial court would be required to take into consideration such evidence also, for the purpose of considering the prayer for bail, and cannot rely simply on the statements recorded by the police during investigation.

7 In the circumstances, it appears proper to direct the trial court to consider the prayer for bail of the applicant, afresh in the event of the applicant making such an application to the trial court. It is because, in my opinion, the trial court would be in a better position to take a decision regarding grant of bail, which as aforesaid, needs to be arrived at by taking into consideration all the relevant aspects of the matter, *including the evidence recorded so far*.

8 In this view of the matter, application is allowed to be withdrawn with liberty to the applicant to apply afresh before the trial court for bail. In the event of such an application being made, the trial court shall decide the same expeditiously, independently, and on merits, without being influenced, in any manner, by the fact of rejection of the applicant's previous application for bail by this Court. In considering the application for bail, the trial court shall, *inter alia*, take into consideration the evidence recorded, so far, during the trial.

9 Application is disposed of accordingly.

(ABHAY M.THIPSAY, J)