

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 839 OF 2015**

Mohd. Makbul Ahmed Mohd. Lal	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. S. R. Gaud for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

PSI Mr. Santosh M. Kamble from Dongri Police Station is present

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 30th APRIL, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 14 of 2014 registered with the Dongri Police Station for the alleged offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code.
3. A few facts as are relevant for deciding the present case are as

under:

The applicant was arrested in connection with the aforesaid C.R for the alleged offences. Pursuant to the arrest of the applicant in April, 2014, the applicant preferred an application seeking his enlargement on bail, before the learned Additional Chief Metropolitan Magistrate, Mazgaon. The learned Magistrate, vide order dated 21st April, 2014, was pleased to enlarge the applicant on bail on the following conditions:

“O R D E R

- i) *The accused be released on PR & SB in the amount of Rs.25,000/- with one or two sureties.*
- ii) *The accused shall not tamper with the prosecution evidence or threaten any of the witnesses.*
- iii) *The accused shall remain present in Police Station Dongri once in 10 days between 2.00 p.m., to 4.00 p.m., if released on bail till filing of the chargesheet.*
- iv) *The accused shall co-operate the police in investigation.*
- v) *The accused shall produce his permanent identity proof and residence proof.*
- vi) *Considering the nature of the transaction oral prayer of cash bail is rejected.”*

4. It appears, that the applicant thereafter preferred an application seeking modification/cancellation of condition of attendance i.e. clause (iii) of the order dated 21st April, 2014. It was set out in the said application that the applicant has been attending the concerned Police Station as

directed; however, as he was suffering from heart ailment, it was difficult to attend the concerned Police Station once in ten days and that the holy Ramazan month was soon approaching. Accordingly, it was prayed that the applicant be permitted to attend the concerned police station once in two months. The learned Metropolitan Magistrate was pleased to relax the condition of attendance from every 10th day till filing of the charge-sheet to that of every 5th day of every month. Thereafter, the applicant moved another application seeking dispensation of the condition of the attendance. It appears that the said application was also allowed and the learned Metropolitan Magistrate directed the applicant to attend the concerned Court on the 5th day of each month, instead of attending the police station. It appears that thereafter, an application was moved on 4th September, 2014 by the Dongri Police Station, seeking attendance of the applicant on the 5th and 6th September, 2014. The said application was allowed by the learned Metropolitan Magistrate and accordingly, the applicant was directed to attend the Dongri Police Station on 5th and 6th September, 2014. It appears that as the applicant did not attend the concerned police station as directed by the learned Metropolitan Magistrate, the Dongri Police filed an application seeking cancellation of the applicant's bail on 13th September,

2014. It appears that the applicant preferred an application in this Court, against the application seeking cancellation of the bail. As the applicant was not present, the application was dismissed by this Court vide order dated 21st January, 2015. Thereafter, the applicant was arrested in Hyderabad on 3rd April, 2015 and was produced before the concerned Magistrate on 5th April, 2015. The applicant filed a fresh application seeking his enlargement on bail, which was rejected by the learned Metropolitan Magistrate and which was subsequently confirmed by the learned Sessions Judge vide order dated 13th April, 2015.

5. Learned Counsel for the applicant submitted that the applicant was suffering from a heart ailment, as a result of which, he could not attend the police station as directed by the learned Metropolitan Magistrate. He submitted that the non-attendance was neither deliberate nor intentional. He submitted that in fact, the applicant had attended the Dongri Police Station earlier as directed by the learned Metropolitan Magistrate, when he was enlarged on bail. He further submitted that the applicant is 51 years of age and is suffering from heart ailment. He submitted that the applicant is ready to undertake and abide by any condition imposed by this Court, if

enlarged on bail. Learned A.P.P opposed the bail application.

6. Perused the papers and all the orders. It appears that the applicant had been appearing before the concerned police station after he was enlarged on bail. The applicant has already suffered for the breach of the order, directing him to attend the concerned police station and has been in custody from 3rd April, 2015.

7. In view of the statement made by the learned Counsel for the applicant that the applicant will undertake and abide by any order/conditions passed either by this Court or the learned Metropolitan Magistrate, the application is allowed. The applicant is directed to be released on bail on the following terms and conditions:

ORDER

- (i) The applicant Mohd. Makbul Ahmed Mohd. Lal be released on bail in connection with C.R. No. 14 of 2014 registered with the Dongri Police Station, on executing PR Bond in the sum of Rs. 15,000/- with one or two local sureties in the like amount;

- (ii) The applicant shall attend the Dongri Police Station, for 3 days continuously, one week after his release, on either Wednesday, Thursday and Friday or on Monday, Tuesday and Wednesday.
- (iii) The applicant shall not tamper or attempt to contact any witness concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Dongri Police Station;
- (v) The applicant to file an undertaking in the trial Court that he will abide by any orders that may be passed by the trial Court;
- (vi) The applicant to cooperate with the conduct of the trial;
- (vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.