

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.949 OF 2015

Mr. Kapil Narendrabhai Makwana	..Applicant
<i>Versus</i>	
The State of Maharashtra	..Respondent

....
Mr. Vijay R. Shinde a/w. Mr. Sudhir Mhatre, Advocate for the Applicant.
Mrs. R.V. Newton, APP, for the Respondent – State.
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CORAM : A. R. JOSHI, J.

DATE : 8th MAY, 2015

P.C.

1. Heard learned Counsel for the applicant. Also heard learned APP for the State.
2. This is an application for regular bail in the matter of C.R. No.I-82/2015 registered with Kamothe police station, Navi Mumbai for the offences punishable under Sections 395, 447, 504 and 506 of IPC.

3. The special feature of this application is that without going to the Sessions Court for grant of bail, this application is preferred before this Court on the emergency that the applicant is in need of immediate medical assistance and treatment in a specialized hospital. In order to substantiate this, medical papers regarding examination of the applicant by J.J. Group of Hospitals are produced before the Court.

4. Even yesterday when the matter was taken for circulation before this Court, directions were given to learned APP to get medical report from the concerned hospital and as such, on her instructions, the Superintendent of Central Prison, Taloja, Navi Mumbai produced medical papers along with a covering letter.

5. Now coming back to the FIR as against the present applicant is concerned, it must be mentioned that the First Information Report was lodged by the officer of one company at Navi Mumbai against the present applicant and other three or four co-accused regarding the incident which occurred on 16th April, 2015 at 12:00 noon in the open plot of the land which was allegedly in possession of the complainant company by way of

lease from the CIDCO. Apparently, the lease period of 30 years is already over and the complainant company had lodged a civil suit against the CIDCO and had obtained the status quo order. According to the complainant, on 16th April, 2015 the present applicant and other co-accused arrived on the spot in various vehicles and threatened the officers of the complainant company and removed iron gate which was being installed by the complainant. Said iron gate was removed in vehicle and was stolen away. Apparently this act is taken by the complainant as attracting provisions of Section 395 of IPC.

6. During the investigation, the present applicant and other three co-accused were arrested on 27th April, 2015 when the FIR was in fact lodged on 23rd April, 2015. As such it is a factual position that for the incident of 16th April, 2015, the FIR came to be lodged after about seven days. During the investigation said iron gate and other articles which were allegedly stolen from the spot, were recovered. Presently the applicant is in Magisterial custody and on the application preferred before the concerned Magistrate the directions were given for his medical check up and bringing of the detailed

report from the J.J. Group of Hospitals and under that premise the report is brought before this Court today.

7. It appears that there is a dispute over the said open plot of the land which according to the present applicant and other co-accused, belongs to them whereas according to the complainant company it is in actual physical possession of the complainant but still according to the complainant the fact remains that the plot is owned by CIDCO and the earlier lease period of 30 years has already lapsed.

8. In any event, considering the above circumstances and mainly considering the medical condition as depicted in the medical report as to the condition of the applicant as to feeling numbness in all his limbs due to the alleged assault at the hands of the police when he was in the police custody, by the present application, the applicant is asking for his release on bail so that he can get appropriate medical treatment.

9. Considering the circumstances of the case and considering that the recovery of the stolen articles is already done, further custody of the present applicant is not

necessary. In the result present application is allowed with following order :

:: O R D E R ::

- [i] Criminal Bail Application No.949 of 2015 is allowed;
- [ii] The applicant shall be released on bail on his executing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties for the like amount;
- [iii] After availing the bail, as above, the applicant shall attend the concerned police station on every Monday between 10:00 a.m. to 12:00 noon, till filing of the charge-sheet;
- [iv] The prayer for cash bail is rejected.
- [v] Criminal Bail Application is disposed of accordingly.
- [vi] Concerned parties to act upon an authenticated copy of this order.

(A. R. JOSHI, J.)