

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 506 OF 2015

Saif Afzal Khan .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Prashant Ganeshnarayan Pandey, Advocate for the applicant.

Mrs. A.A. Mane, APP for the State

Mrs. Asha Korake, P.I., Crime Branch, Unit – 9, Bandra, Mumbai,
present in Court.

CORAM:-V. L. ACHLIYA, J.
DATED : -03/06/2015

VACATION COURT

P.C.

Heard the learned counsel for the applicant and the
learned APP for the respondent-State. Perused the application and
the order dated 28/5/2015.

2 In nutshell it is the contention of the learned counsel
for the applicant that the applicant was arrested in connection with
offence u/s 420, 452, 467, 468, 471, 383, 380 r/w S. 120-B and
Section 34 of IPC registered vide C.R. No. 230/15 with Dahisar

Police Station. The applicant was arrested on 13/5/2015 and later on remanded to Judicial Custody on 16/5/2015. After rejection of bail application filed by the applicant, by the Metropolitan Magistrate, the applicant immediately filed regular bail application before the learned Sessions Judge, Dindoshi, Mumbai, which is registered as B.A. No. 259/2015. The said application was placed for hearing before the learned Addl. Sessions Judge on 26/5/2015. The learned Addl. Sessions Judge was pleased to call report from the concerned police station and posted the matter on 27/5/2015. On 27/5/2015, the learned Addl. Sessions Judge, though heard the application and closed it for order but not passed the order and posted the matter for order on 9/6/2015.

3 Since the applicant was behind the bar, the applicant moved an application through his counsel on 27/5/2015 to grant ad-interim bail in the matter as the regular bail application was posted for orders on 9/6/2015. However, the learned Addl. Sessions Judge has rejected the application vide order dated 28/5/2015. Being aggrieved by the said order the applicant has approached this Court for passing of interim order to release the applicant on bail till

passing of order by the learned Addl. Sessions Judge.

4 The learned counsel for the applicant has strenuously contended that it was not proper on the part of the learned Addl. Sessions Judge to have heard the application and then posted for order after fifteen days, only for the reason that the learned Judge was proceeding on vacation. It is contended that if the learned Judge was not in a position to hear and decide the matter, he could have adjourned the same so that the matter could have been taken up for hearing before another Judge, assigned with the work during vacation. The learned counsel has further assailed the order dated 28/5/2015 with contention that the learned Addl. Sessions Judge was grossly erred in observing in the order that the Court has no power under the law to grant interim relief.

5 The learned counsel has relied upon the decision of the Allahabad High Court, in the case of **Smt. Amarawati & Anr. v. State of U.P., 2005 CRI. L.J. 755**, and the judgment of the Apex Court in the case of **Sukhwant Singh & Ors. v. State of Punjab, 2009 (7) SCC 559**.

6 The learned APP for the respondent-State has strongly

opposed the application for grant of interim bail to the applicant. The learned APP has submitted that it is nowhere the mandate of law that Magistrate or the Sessions Judge must decide the application on the same day. She further submits that so far as the grant of bail to an accused is concerned, it is a discretionary relief which is to be granted judiciously on due consideration of entire facts and circumstances of the case. By referring the decision as relied by the learned counsel for the applicant in the case of **Smt. Amarawati & Anr. (supra)** the learned APP has submitted that in the said decision the Court has specifically observed that High Court should not ordinarily direct subordinate Court to decide the bail application on the same day and issuance of direction in this behalf would amount to interfering with the judicial discretion of the Court, hearing the bail application.

7 Having regard to the submissions advanced, I would not like to go into the merits of the matter. The grievance of the applicant is to be considered in a limited sphere as to whether the learned Addl. Sessions Judge was justified in postponing the matter for passing order after fifteen days, after the application was heard

and reserved for order. It appears that due to the vacation, the learned Addl. Sessions Judge may be under tremendous pressure of work which may be the reason for the learned Addl. Sessions Judge not to pass order immediately after conclusion of hearing of the bail application. If the learned Addl. Sessions Judge was under tremendous work pressure, it was expected on his part that instead of hearing the application he should have posted the same to some other date so that the matter could have been placed before another learned Judge, taking up the assignment during the vacation.

8 I am, therefore, of the view that the present application deserves to be disposed of by giving appropriate direction in the matter for expeditious disposal of the bail application filed by the applicant . Hence the following order:

(a) The learned counsel for the applicant is directed to appear before the Principal Judge, City Civil and Sessions Court, Mumbai, on 4/6/2015 and make an application for expeditious disposal of Criminal Bail Application No. 259 of 2015, which is heard on 27/5/2015 and posted for order on 9/6/2015 by the learned Addl. Sessions Judge, Court No. 10, Bombay City Civil & Sessions

Court at Dindoshi.

(b) In case, if such an application is made the learned Principal Judge, City Civil and Sessions Court, Mumbai, is directed to consider the request of the applicant for expeditious disposal of the application by issuing appropriate direction which includes the assignment of the bail application to any other Judge for hearing for expeditious disposal of the application or any other suitable order deem fit and proper in the facts and circumstances of the case.

9 The application is disposed of.

10 Office to provide authenticated copy of this Order.

(V. L. ACHLIYA, J.)

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