

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1208 OF 2015

Nathubhai Ganeshbhai Sihora ..Applicant

Versus

The State of Maharashtra ..Respondent

....
Mr. M.S. Mohite, Advocate i/b. Jamshed Ansari, for the
Applicant.

Ms. Anamika Malhotra, APP, for the State.

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CORAM : A. R. JOSHI, J.

DATE : 29th JULY, 2015

P.C.

1. Heard learned Counsel for the applicant. Also heard learned APP for the State.

2. This is practically the fourth bail application preferred by the applicant before this Court. First bail application was withdrawn as during pendency of said application charge-sheet was filed and the applicant after withdrawing the application went before the trial Court but after rejection of his application by the trial Court the applicant came before this Court with second bail application which is bearing Bail Application No.87

of 2014. Said application was extensively heard and disposed of by a detailed order of this Court on 7.5.2014 discussing the material *prima facie* available against the applicant as to his involvement in the offence punishable under Section 307 read with Section 120B and also section 34 of IPC.

3. After rejection of the second application, as above, third Bail Application No.1988 of 2014 was preferred. It was also heard at length though it was repeated bail application as various grounds were brought to the notice of this Court on behalf of the applicant. Said application was disposed of by a detailed order dated 11.11.2014. On this factual position, this fourth bail application is preferred on apparent change in circumstances.

4. During the arguments, learned Counsel for the applicant stated that since the date of his arrest i.e. since 2.10.2013 the applicant is in custody till date and there is no immediate prospect of starting with the hearing of the matter. Secondly, it is submitted that another co-accused was released on bail by the co-ordinate Bench by order dated 2.9.2014. By pointing out grant of bail to the said co-accused in said another

Bail Application No.1474 of 2014 it is submitted on behalf of the applicant that the role assigned to the said co-accused was arranging of placing of a two-wheeler vehicle at a particular place so as to be used in commission of an offence. It is further pointed out that while granting bail in that matter the another Bench of this Court (Smt. Sadhana S. Jadhav, J.) had *prima facie* opined that the prosecution could not establish that the same vehicle was used in the offence. As such by pointing out this, the learned Counsel for the applicant submitted that one of the circumstances held against the present applicant is also that of purchasing a particular two-wheeler vehicle from a show-room and keeping it in a particular place and which was apparently used by the co-accused for coming to the spot for commission of the offence that too stabbing and assaulting the victim by accosting him on his way on the road. As such, it is the submission on behalf of the applicant that this circumstance regarding use of the vehicle has not been held against the co-accused by the co-ordinate Bench, and as such this circumstance is also required to be taken in favour of the present applicant.

5. Needless to mention that while appreciating any application for bail, any earlier decision is not of much significance when such a decision is so far as the co-accused is concerned, moreover it relates to appreciation of a particular piece of evidence *prima facie*. Needless to mention that this Court is not scrutinizing the material available in the police charge-sheet and considering its pros and cons as is required to be done at the trial. *Prima facie* the involvement of the applicant in a serious offence is clearly held while discussing the material against him in both the earlier orders passed by this Court first dated 7.5.2014 and second dated 11.11.2014. In any event, this circumstance as to grant of bail to the co-accused cannot be considered in favour of the present applicant.

6. So far as the first circumstance as to custody of the applicant for about one year and nine months, it must be mentioned that the offence alleged against the applicant is punishable under Section 307 read with Section 120B of IPC attracting maximum punishment for life. Definitely balance is required to be struck considering the seriousness of the offence and the personal liberty of a accused. In doing so in the

considered view of this Court the custody of the applicant for less than two years will not prompt this Court to view his case differently when the earlier two applications were rejected by the detailed orders and when the offence is serious and also may attract punishment upto imprisonment for life.

7. During the arguments, learned Counsel placed reliance on the ratio propounded by the authority in the case of ***R.D. Upadhyay v. State of A.P. And others***¹ and stated that it was the duty of the Courts to take *suo motu* action for release of the accused on bail when the under-trials are languishing in jail for a particular period. By pointing out the contents of para-3 of the authority it is submitted that if the under-trials are in custody for more than one year they shall be released on bail forthwith to the satisfaction of the respective trial Courts and this was the mandate of the law by the said authority. Counter to these arguments, learned APP placed reliance on another authority in the case of ***Raj Deo Sharma vs. State of Bihar***² wherein it is also mandated by the Hon'ble Apex Court that if half of the punishment of the maximum which can

1 1996 SCC (Cri) 519

2 1998 AIR (SC) 3281

be awardable under a particular offence is undergone by an under-trial, his case can be favourably considered for grant of bail. Needless to mention that there should be a balance struck between the seriousness of the offence and the material available against the accused so far as his involvement *prima facie* established by the material in police charge-sheet.

8. Keeping in view the ratios of the above authorities and the facts of the present case and that there is no apparent change in circumstances so as to view the matter differently, in the opinion of this Court, there is nothing to entertain the present application and the same is accordingly dismissed and disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)