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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1860 OF 2014

Mohammed Ismail Thayum @Bomb	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Ayaz Khan, for the Applicant.
Ms.P.P.Shinde, APP for the Respondent – State.
PSI – C.K.Chavan, A.N.C. Ghatkopar.

CORAM : REVATI MOHITE DERE, J.
DATED : 29th APRIL, 2015.

PC.

1. Heard learned counsel for the Applicant and the learned APP for the Respondent – State.

2. Learned Counsel for the Applicant submitted that the learned Special Judge has essentially rejected his application for bail, on the ground, that the applicant's earlier bail application having been rejected, there was no change in the circumstance and that unless and until there was change in the circumstances or any new ground was made out, grant of bail would amount to reviewing of the order dated 4th June, 2014, by which the applicant's first application for bail was rejected. He submitted

that the said application has not been considered on merits and that filing of the charge-sheet, itself is a change of circumstance. He submitted that in the present case, there is non-compliance of Section 42 as well as the officer who had investigated the case was not competent to investigate the case. He submitted that both the aforesaid grounds, have not been urged before the learned Special Judge. He states that the applicant be permitted to agitate the said grounds before the learned Special Judge, as the application has not been considered on merits.

3. Perused the order dated 24th July, 2014. It is evident, prima-facie, that there is no discussion on the merits on the applicant's bail application. It appears that the grounds of non-compliance of Section 42 of the NDPS Act, as well as the ground that the officer who had investigated the case was not competent to investigate the case, were not agitated.

4. Accordingly, the applicant is at liberty to file a fresh application, raising the aforesaid grounds. If such an application, is filed, the learned Judge shall decide the same on its own merits, in accordance with law.

5. In view of the aforesaid, learned Counsel for the Applicant does not

press this Application and seeks to withdraw the same.

6. The Application is accordingly disposed of as withdrawn.

7. It is made clear, that this Court has not gone into the merits of the said application and if a fresh application is filed, the learned Judge shall decide the same on its own merits, in accordance with law, uninfluenced by the withdrawal of this Application. The said application shall be decided as expeditiously as possible.

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

(REVATI MOHITE DERE, J.)