

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO. 1747 OF 2015
WITH
CIVIL APPLICATION NO. 868 OF 2015 IN B.A. NO. 1747 OF 2015**

Bhanudas Eknath Kotkar	... Applicant
Vs.	
The State of Maharashtra	... Respondent
And	
Shankarrao Vithalrao Raut	... Intervener

Mr. Mahesh Ram Jethmalani, Senior Advocate a/w. Mr. Satyam Harshad Nimbalkar, Mr. Hrishikesh D. Ghorpade, Mr. Nilesh B. Tribhuvan, Mr. Sailesh G. Mhaske, Mr. Pranav Pokale, Ms. Shalini Saxena i/b. Mr. Satyam H. Nimbalkar, Advocate for the applicant.

Ms. Rajeshree Gadhi, APP for the respondent/State.

Mr. Jitendra Gaikwad, Advocate for the applicant in APP/868 of 2015.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE : 13th October, 2015

P.C.:

Criminal Application No. 868 of 2015 is filed by the original complainant for intervention.

2. This third application for bail is moved by the applicant/accused who is facing charges under sections 302, 201, 466, 474, 120B r/w. 34 of the Indian Penal Code. The first Bail Application was rejected on 14th July, 2014. Then, second bail application was made which was rejected on 8th July, 2015. While rejecting the said application, I granted liberty to the

applicant/accused that if the entire evidence is not recorded till 31st August, 2015, then the applicant/accused can file fresh bail Application before this Court. Today this Bail Application is filed on the grounds as the entire evidence is not recorded till 31st August, 2015 and the health of the applicant is deteriorating. The evidence of all the witnesses is recorded and evidence of Investigating officer is in progress. However, the Investigating officer Ms. Jyotipriya Singh is Superintendent of Police, Jalna and her evidence is being recorded in Lucknow, as she has taken maternity leave for six months. She proceeded on leave from 7th September, 2015 and has gone to Lucknow for delivery. The learned Sessions Judge has passed the order of recording her evidence on Commission and the recording of her evidence started on 12th October, 2015.

3. The learned senior counsel for the applicant/accused has submitted that the prosecution has sought extension of six months for completion of the trial and this Court (Coram: Mrs. Revati Mohite Dere, J.) by an order dated 15th September, 2015 has granted extension to complete the trial. He submitted that this order was obtained in the back of the applicant/accused and no audience was given to the applicant/accused at the relevant time. He further submitted that this Court has rejected the

second Bail Application mainly on the ground that the witnesses should come forward and they should not be tampered due to influential position of the applicant/accused. However, today the evidence of all the witnesses is recorded except that of the Investigating officer, so that apprehension does not exist. He further submitted that the application is made on the other ground that the applicant/accused is suffering from heart disease and medical report dated 29th September, 2015 issued by Medical Officer, Nashikroad Central Prison where the accused is at present detained. He submitted that the applicant is diabetic with hypertension and needs to go for angiography and he has unstable blood pressure. The learned senior counsel submitted that this court in Bail Application No. 559 of 2015 on 8th July, 2015 having the similar medical record of the applicant/accused has granted temporary bail for treatment. He further submitted that except the complainant and his wife who are not related to the victim, there is no evidence against the applicant/accused. The family of the victim did not support the case of the prosecution. The learned senior counsel submitted that the applicant/accused is not likely to jump the bail. The applicant has spent four years in the prison and there is no evidence against him and everyday of personal liberty is important. He submitted that the applicant is 58 years old and suffering from physical ailments. He needs to be treated properly.

4. The learned APP opposed the Bail Application and submitted that medical facilities are available at J.J. Hospital and the applicant/accused can be referred to J.J. Hospital to take medical treatment. She further submitted that the evidence of Investigating officer will be recorded within a short period. When the previous bail applications are rejected by this Court, this Bail Application should not be entertained and is to be rejected.

5. In the present case, entire evidence except the evidence of Investigating officer is recorded. At this stage, this Court neither can go into the merits of the matter nor can read evidence and assess the evidence at this stage. The learned Sessions Judge, who has recorded the evidence and conducted the trial, is the best person to appreciate the evidence and pass the judgment accordingly.

6. This Application is entertained on medical ground and also other circumstances dehors merit, that the accused is in prison since last four years and it was expected that the recording of evidence would be completed within one year from 14th July, 2014. However, it was not completed. Then, it was expected that the trial would be completed till 31st August, 2015, however, the trial is not completed. It is to be

understood that the matter was not made time bound. This time limit was specified for the purpose of curtailing delay in trial and as 3 to 4 prosecutors were changed in the said trial and therefore some time period was given. While rejecting the second Bail Application on 8th July, 2015, this court has mainly considered a ground of tampering of evidence and has not gone into the merits of the case in its entirety.

7. The report dated 29th September, 2015 issued by the Medical Officer, Nashik Road Central Prison discloses that the applicant/accused is having heart ailment. It is mentioned that the applicant is having unstable blood pressure, diabetics mellitus with ischemic heart disease and may cause injuries to vital organs.

8. One more peculiar aspect is to be considered that the Investigating has to take maternity leave for six months and so her evidence cannot be recorded before the regular Court and Commission is appointed at Lucknow. This will take more time. Considering this medical report and as the evidence of all the witnesses except the Investigating officer is recorded, I am inclined to grant temporary bail for 45 days from the date the applicant secures bail on the following terms and conditions:

ORDER

- (i) The applicant/accused shall be released on temporary bail for 45 days upon furnishing PR. Bond in the sum of Rs.1,00,000/- with two sureties in the like amount;
- (ii) The applicant shall not commit any offence of any nature and if an offence is committed, then the bail shall be cancelled forthwith and the prosecution shall take steps immediately.
- (iii) The applicant shall not pressurize or threaten any witnesses especially the complainant and his family members.
- (iv) The applicant shall not enter the Nagar District when on bail.
- (v) The applicant/accused shall make himself available and attend all the Court dates;
- (vi) The applicant/accused shall not abscond and shall furnish his residential address during his bail period to the police.
- (vii) The applicant shall surrender to the jail on the 45th day without seeking any extension.
- (viii) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

(ix) The applicant/accused shall not leave India without the prior permission of the Court.

9. Though temporary bail is granted by this Court on medical ground, I am not granting this bail on parity but independently taking into account the present health of the accused and to get him proper and good medical treatment.

10. The learned Sessions Judge to take note that this bail is granted only on medical ground and the evidence recorded by the Court is not at all considered. This order shall not come in the way of learned Sessions Judge while appreciating the evidence.

11. The Application stands disposed of on above terms.

(MRS.MRIDULA BHATKAR, J.)