

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.771 OF 2015

IN

BAIL APPLICATION NO.1584 OF 2015

THE STATE OF MAHARASHTRA

)...APPLICANT

V/s.

SAQUIB ABDUL HAMID NACHAN

)...RESPONDENT

Smt.Rebecca Gonsalves, Advocate for the Applicant in Bail Application No.1426 of 2015.

Shri M.H.Solkar, i/b. Smt.Taheera Qureshi, Advocate for the Applicant in Bail Application No.1584 of 2015.

Shri Subhash Jha a/w. Smt.Rushita Jain i/b. Law Global, Advocates for the Applicant in Criminal Application No.742 of 2015.

Smt.V.S.Mhaispurkar, APP for the Respondent – State in Criminal Application No.771 of 2015.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th SEPTEMBER 2015.

P.C. :

1 This is an application filed by the State of Maharashtra challenging the maintainability of the Bail Application No.1584 of 2015 filed by the respondent herein, which is pending before this court.

2 The said bail application is listed for hearing today, and inspite of some adjournments having been taken previously, today also an adjournment is sought by the State.

3 Paragraph 12 of the application reads as follows :

“12. The Applicant states that therefore the following points are required to be considered first i.e. :-

(a) Whether an Application filed by the Respondent for his release on bail, is maintainable before this Hon’ble Court, without the Respondent hereinabove first approaching the Learned Trial Court as directed by the Hon’ble Supreme Court in its Order dated 4.8.2015 ?

(b) As to whether Hon’ble High Court has

jurisdiction to entertain an application without there being an order passed by the Trial Court at first instance as a matter of propriety or even otherwise ?

(c) That the issue of maintainability of the application filed by Respondent hereinabove before this Hon'ble Court may be decided as preliminary issue, in view of the order dated 4.8.2015 passed by the Hon'ble Supreme Court of India in S.L.P. No.6373 of 2014.”

4 The prayer clause in the application reads as under :

“It is, therefore, humbly prayed that :-

- a. the issues raised by the applicant hereinabove, in Para No.12 of this Application may be decided first, before deciding the Application filed by the Respondent hereinabove on its own merits;
- b. For such further and other reliefs as the nature and circumstances of the case may require.”

In view of this, I have considered the maintainability of the bail application in the light of the arguments advanced by Smt.V.S.Mhaispurkar, the learned APP for the State. I have also heard Mr.Subhash Jha, the learned counsel for the First Informant, who is seeking intervention in the bail application.

5 For the sake of convenience and clarity, the respondent herein shall be referred to as 'the accused'. He is the one, who is the applicant for bail.

6 The accused was released on bail by an order dated 31st July 2014. Against the order granting bail, the State of Maharashtra approached the Supreme Court of India by filing a Special Leave Petition. Leave was granted, and the appeal filed by the State of Maharashtra challenging the said order granting bail to the accused, was allowed. It is thereafter, that the Bail Application No.1584 of 2015 has been filed by the accused.

7 The objection to the maintainability of the bail application is based on the observations made by the Supreme Court of India in the concluding paragraph of its order (paragraph 7). The substance of the submissions made before me is that the observations made by Their Lordships of the Supreme Court of India implied that the accused shall not be entitled to apply afresh for bail before this court again.

8 I find no substance in this contention.

9 I have carefully gone through the order passed by the Supreme Court of India whereby the order granting bail to the accused was set aside. Their Lordships observed that since the accused was charged, inter alia, for the commission of offences punishable under the Maharashtra Control of Organized Crime Act (M.C.O.C. Act); bail could be granted to him only after taking into consideration the provisions of Section 21(4)(b) of the M.C.O.C. Act. This is what Their Lordships observed :

“For the present, it would be sufficient to notice that under Section 21(4)(b) of the MCOCA, bail can be granted to an accused only after hearing the Public Prosecutor and subject to recording of twin satisfaction by the court to the effect : (1) that there are reasonable grounds for believing that the accused is not guilty of the offence; and (2) that the accused is not likely to commit any offence while on bail.”

10 In the last paragraph of the order (paragraph 7) Their Lordships observed as follows :

“Evidently, the High court while granting bail to the respondent accused has not recorded any finding that the accused is not likely to commit any offence while on bail. This is a mandatory requirement for grant of bail which is not satisfied by the order of the High Court. The same, according to us, would, therefore, vitiate the order of the High Court granting bail to the respondent accused. Accordingly, we allow the appeal; set aside the order of the High Court *leaving it open for the accused respondent to avail of all such remedies as may be open to him in law.* We make it clear that it is open for the respondent accused to advance all contentions as may be open to him in law before the learned trial court.”

(Emphasis supplied)

11 It is, therefore, clear that the order granting bail to the accused was set aside because it did not reflect a finding that '*the accused was not likely to commit any offence, while on bail.*'

12 It is impossible to construe that these observations would prohibit the applicant from seeking bail afresh. Infact, when the learned APP was specifically asked whether she indeed claims that the applicant would not be entitled to apply for bail, the contention was slightly modified. It was submitted that 'it is not that the accused cannot apply for bail afresh, but such application can be made by him only before the trial court.'

13 Shri Jha, the learned counsel for the First Informant, who is seeking intervention in the bail application, emphasised the last two sentences in the last paragraph of the order passed by Their Lordships of the Supreme Court of India. The same have been reproduced earlier. According to Shri Jha, the last sentence whereby Their Lordships made it clear that 'it would be open for

the accused to advance all contentions as may be open to him in law before the learned trial court', should be construed as an observation prohibiting him to go to any other court, or seek any other remedy. According to him, the previous sentence, whereby Their Lordships have observed that they were 'leaving it open for the accused – respondent to avail of all such remedies as may be open to him in law' is qualified by the next sentence and limits the wide scope of the earlier sentence. I find absolutely no substance in this contention. Stipulating that *'it would be open for the accused to advance all contention as may be open to him in law before the learned trial court'* cannot be construed as taking away his right to avail of other legal remedies as might be open to him.

14 Once it is accepted that a legal remedy of applying for bail before this court is available to him, unless there is express prohibition preventing him from applying for bail before this court, the order passed by Their Lordships can never be construed as permitting the accused to seek whatever reliefs that he wants, *from the trial court only.*

15 Interestingly, Shri Solkar, the learned counsel for the accused, has pointed out that, though Shri Jha has supported the argument about the maintainability of the bail application as raised by the State, no such contention has been taken by him in the application for intervention that has been filed.

16 Shri Jha also submitted that since the trial is ordered to be expedited, there is no propriety in the accused approaching this court for bail. I do not find any substance in this contention, in as much as, it is for the accused to decide what would be in his interest.

17 In my opinion, the bail application is maintainable and needs to be decided on merits, by keeping the observations made by Their Lordships of the Supreme Court of India while setting aside the order granting bail to the accused, in mind.

18 The application is rejected.

19 At this stage, it is prayed that the operation of this order should be stayed for the purposes of enabling the State to challenge this order. It is expressly submitted that till the State gets time to challenge this order, the bail application should not be heard. Such a course is too absurd to be adopted. It has already been observed that the State is reluctant to proceed with the hearing of the bail application. The present application was probably made to ensure that the hearing of the bail application would thereby be delayed, as can be inferred from the prayers. Now, on the ground that the State be given time to challenge this order before the Hon'ble Supreme Court of India, the hearing of the bail application cannot be delayed for an indefinite period. Such a prayer is rejected.

20 The hearing of the bail application is peremptorily fixed on 14th September 2015 (Not before 12.30 p.m.).

(ABHAY M. THIPSAY, J.)