

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.6273 OF 2015

Yogesh s/o Hiranman Jadhav ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr M.B. Ubale, Advocate holding for Mr A.P. Gunge, Advocate for applicant;

Mr M.M. Nerlikar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th January, 2016

ORDER :

By the present application under section 439 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with C.R. No.I-2/2015, registered with Wadod Bazar police station, for offence punishable under section 395 of the Indian Penal Code, in relation to which Sessions Case No.79 of 2015 is pending before the learned Sessions Judge, Aurangabad.

2. After filing of the charge-sheet, the applicant herein had preferred Criminal Application No.2136 of 2015, which came to be rejected by this Court, by order dated 15th June, 2015, on the ground that the applicant herein was identified in an identification parade.

3. Learned Counsel appearing on behalf of the applicant has placed on

(2)

record evidence of P.W.1 Akbarkhan, so as to demonstrate that the said witness has refused to identify the applicant herein. According to him, on the above referred issue, the applicant is entitled to be released on bail.

4. Learned Addl. Public Prosecutor has opposed the application on the ground that successive bail application, in the same crime, is not maintainable before this Court just because the trial has commenced. He would then submit that the evidence, as is recorded, is a matter of appreciation by the Sessions Court and it is not open for this Court to consider evidence of the witness recorded before the Trial Court in Sessions Trial to form an opinion about *prima facie* non-involvement of the applicant in the crime in question. According to him, the application is liable to be rejected.

5. Having bestowed my thought to the submissions made, it is noted that the earlier bail application preferred by the applicant after filing of the charge-sheet was rejected by this Court by an order dated 15th June, 2015. Apart from the reason for rejection mentioned in the order dated 15th June, 2015, in my opinion, the learned Addl. Public Prosecutor was right in submitting that this Court should be slow in appreciating the evidence recorded during the trial, so as to conclude that *prima facie* involvement of the applicant cannot be inferred.

(3)

6. Since the trial has already gained sufficient momentum, in my opinion, it will not be appropriate to enlarge the applicant on bail. Thus, the Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

amj