

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.175 OF 2016

Javed Munshi Khan

...Applicant

Versus

Ahmed Abdul Saleji & Anr.

...Respondents

.....

Mr. Dilip Shukla for the Applicant.

Mr. Arfan Sait, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :12th FEBRUARY, 2016.

P. C. :

Not on board. Taken on board on being mentioned on the ground of urgency.

2. By this application the Applicant herein has challenged the order dated 11.2.2016 whereby the Additional Sessions Judge, Dindoshi has refused to grant ad-interim stay of order dated 30.1.2016, passed by the Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, in C.C. No.1861/SS/2013.

3. The learned counsel for the Applicant has stated that the learned Magistrate has closed the evidence without giving opportunity

to the Applicant to establish his defence. The learned counsel for the Applicant has further submitted that the learned Magistrate has fixed the case for final arguments, despite which the learned Sessions Judge has not granted interim relief. He has submitted that the Applicant will be deprived of adducing defence evidence and establishing his defence and innocence in case the proceedings before the Magistrate are not stayed.

4. Heard the learned counsel for the Applicant and the learned APP for the Respondent-State. The records reveal that the learned Magistrate had closed the defence evidence and aggrieved by which the Applicant had preferred revision application No.245 of 2015 before the Sessions Court. By order dated 25.8.2015 the learned Sessions Court, Greater Bombay had allowed the revision application and consequently set aside the impugned order and permitted the Applicant to lead evidence which was to be concluded within a period of two months from the date of receipt of the order of learned Magistrate. The records reveal that the said writ was received by the Magistrate on 14.9.2015.

5. The learned Magistrate by order dated 30.1.2016 has noted that the writ was received on 14.9.2015 and that the Applicant and his

counsel had not appeared before the Court and did not adduce the defence evidence. The learned Magistrate therefore, fixed the case for further stage. The Applicant herein has challenged the said order before the Sessions Court. The grievance of the Applicant is that the learned Magistrate has fixed the case for final arguments and since the learned Sessions Judge has not granted ad-interim stay the Applicant herein will be deprived of adducing defence evidence and thereby establishing his innocence. Under the circumstances, in my considered view it is necessary to stay the proceeding in C.C. No.1861/SS/2013 pending before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai, till the disposal of the revision application No.38 of 2016.

6. Hence, the application is granted. Proceedings before the learned Metropolitan Magistrate are stayed till the disposal of revision application No.38 of 2016.

7. The learned Sessions Judge to decide the revision application No.38 of 2016 as expeditiously as possible and in any event within a period of three weeks from the date of receipt of this order.

(ANUJA PRABHUDESSAI, J.)