

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.688 OF 2016

SHRI SANJAY AABA DENGLE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Santosh M. Deshpande, Advocate for the Applicant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 13th APRIL 2016.

P.C. :

1 Heard Shri Santosh Deshpande, the learned counsel for the applicant. Heard Shri V.B.KondeDeshmukh, the learned APP for the State.

2 The applicant had previously applied for bail (Bail Application No.992 of 2014, decided on 9th July 2014). However, the applicant after advancing some arguments, sought permission

to withdraw the application, which was granted, and the application came to be dismissed as withdrawn. Liberty was, however, given to the applicant, to apply afresh for bail, in the event of the trial not being over within a period of 9 months from the date of the said order i.e. 9th July 2014.

3 Admittedly, the trial is still not over. It also appears that it is not likely to be over within a short time.

4 In the meantime, a co-accused in the same case – one Micheal Babu Argelo applied for bail before this court (Coram : A.S.Gadkari, J.). This application (Bail Application No.1125 of 2015, decided on 4th March 2016) was allowed and the said co-accused was ordered to be released on bail, subject to certain conditions.

5 It is, thereafter, that the present applicant once again made an application before the trial court, basically highlighting two aspects – the first being, that the trial was not over within 9

months, as indicated by this court in its order dated 9th July 2014, while permitting the applicant to withdraw his bail application; and the second being, that the co-accused Micheal Argelo had been released on bail by this court.

6 The learned Additional Sessions Judge, who is holding the trial, however, rejected the applicant's application. It is, under these circumstances, that the applicant has now, once again, approached this court.

7 I have gone through the order passed by the learned Additional Sessions Judge. He was of the view that, at that stage of the trial, a meticulous scrutiny of the evidence was not expected, and that, in the facts and circumstances of the case, the applicant was not entitled to be released on bail. He, however, did not discuss as to whether the case of the co-accused Micheal Argelo was different from that of the applicant – or at any rate, so different as to warrant a drastically different treatment to the applicant.

8 The proposition of law, as put forth by the Additional Sessions Judge, that for the purposes of bail, a meticulous scrutiny of the evidence that was being adduced during the trial, could not be undertaken, is correct. What, however, needs to be observed is that, a *prima facie* view of the evidence, nevertheless, is required to be taken. The learned Additional Sessions Judge has emphasized in his order that “in Section 437(1) of the Cr.P.C., phraseology used is '*reasonable grounds for believing*' instead of '*the evidence*'.” If the learned Judge was suggesting therefrom that '*the evidence*' was not to be taken into consideration while examining the existence (or otherwise) of '*reasonable grounds for believing...*', then, to that extent, he was not right. True, the court is required to arrive only at a finding about the existence (or otherwise) of '*reasonable grounds for believing...*', but there is no warrant for the proposition that the opinion about the existence (or otherwise) of '*reasonable grounds for believing...*', has to be formed by ignoring or keeping aside the evidence. Rather, when the prayer for bail is to be considered *after* evidence has been adduced, the nature of evidence will be the major factor,

influencing the opinion of the court about the existence (or otherwise) of '*reasonable grounds for believing....*' This has been observed only to state the correct legal position and it is not to suggest that any opinion about the nature and quality of evidence, that has been adduced by the prosecution, has been formed by this court. As rightly observed by the learned Additional Sessions Judge, only a *prima facie* view of the evidence is required to be taken at this stage, and a meticulous and thorough scrutiny thereof can be undertaken only while deciding the case finally.

9 After considering the facts of the case, in my opinion, the applicant's case is certainly not very different from that of the co-accused Micheal Argelo, who has been released on bail.

10 The applicant is in custody since 20th November 2013.

11 As the trial is not likely to be over within a short time, I am inclined to release the applicant on bail. After all, it would be, rather, unfair, that the said Micheal Argelo should be permitted

to be on bail, but the present applicant should be required to be in custody till the trial is over.

12 The application is allowed.

13 The applicant is ordered to be released on bail in the sum of Rs.25,000/-, with 1 surety in like amount, or two sureties in the sum of Rs.12,500/- each, on the following conditions :

- i) The applicant shall report to Bandra Police Station on every Monday between 7 p.m. to 8 p.m., till the conclusion of the trial.
- ii) The applicant shall not contact, meet or approach, any of the prosecution witnesses, in any manner, whatsoever.

(ABHAY M. THIPSAY, J.)