

Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1125 OF 2015

Micheal Babu Argelo

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Santosh Deshpande for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. Santosh Sitaram Ghadigavkar, Bandra Police Station present.

CORAM: A.S. GADKARI, J.

DATE : 4th March 2016.

P.C.

1 The applicant is seeking bail in CR No.594 of 2013 dated 15th November 2013 registered with Bandra Police Station under Sections 395, 341, 170, 171, 201, 120-B and 34 of Indian Penal Code.

2 At the outset, it may be noted here that in Criminal Bail Application No.991 of 2014 and 992 of 2014 preferred by the accused Nos.1 and 9 respectively this Court while dismissing the said applications this Court had given liberty to the accused persons to file fresh bail application in the event of the trial not being over within a period of nine months from 9th July 2014. The said order dated 9th July 2014 is at page 64

of the present application. The period of nine months has come to an end in April 2015. However, as of today the trial pertaining to CR No.594 of 2013 is not concluded. During the course of the arguments of the present application, this Court directed the learned APP appearing in present case to take instructions from the concerned Public Prosecutor appearing in Sessions Case No.420 of 2014 as to why the trial is not concluded despite the observations by the High Court and how much time further it will take to conclude the same. Today the report dated 3.3.2016 submitted by the Additional P.P. Shri Prabhakar Tawade, Greater Mumbai to the Senior Inspector of Police of Bandra Police Station has been placed before this Court. In the said report, it is stated that there are 109 witnesses and as of today 21 witnesses have been examined. It is further stated that there are 25 to 30 very important witnesses whose evidence is yet to be recorded. The concerned APP has further casually and with utmost irresponsibility at his command has stated that the evidence is being recorded as per the convenience of the Trial Court. He has further gave excuse that the Advocates for the accused persons are taking time and the prosecutor is not responsible for the same. The concerned APP has without taking into consideration the order passed by this Court dated 9th July 2014 has further proceeded to state that the higher Court has nowhere put limitation for

disposal of the said case within a stipulated period. I am surprised after reading the said report dated 3rd March 2016 forwarded by the concerned APP. It appears to me that the concerned APP is totally oblivious about the order dated 9th July 2014 passed by this Court or is deliberately feigning ignorance of the said order and also unable to understand the meaning of Clause No.3 of the said order.

In view of the above, the Directorate of Public Prosecution is hereby directed to take note of the aforesaid observations and take appropriate remedial measures in that behalf.

4 As far as the present applicant is concerned, the record discloses that he was arrested on 20.11.2013. That the complainant in his FIR dated 15.11.2013 has stated that he was employee with Sai Air-Currier Services. The said Company was in the business of transporting the ornaments of the Jewellers from Mumbai to various places in India. That on 14.11.2013 the complainant along with other employees was travelling in Swift Car bearing No.MH-04-GE-1534 and were proceeding towards Santacruz Air Port. A taxi chased their Car. In the said taxi there were four persons out of which two were in the uniform of Police and two persons were having civil dress. The said persons asked to stop the said car. Thereafter four persons in the taxi committed robbery of the goods from

the complainant's car. The said persons thereafter forcibly pushed the occupants of the said car down and drove the the said car and fled away from the scene of offence. After lodgment of the FIR, during the course of investigation, police arrested in all ten accused persons. After completion of the investigation, police have filed chrgesheet.

5 The record discloses that three witnesses have not identified the present applicant in test identification parade. PW No.4 Aakash Singh has identified the present applicant in test identification parade, however, in substantive evidence before the Court, the said witness failed to identify the applicant. This leads to the next circumstance against the applicants.

6 It is the prosecution case that there is discovery of certain ornaments from the applicant. The complainant has identified the said ornaments as those belonging to him. It prmia facie appears from the record that the complainant had no opportunity to see those ornaments prior to those being put in a sealed envelope at the office of Courier Company or at the office of the respective customers who handed over the said ornaments to the complainant. It appears that the identification of the said ornaments by the complainant is prima facie doubtful.

Apart from the aforestated circumstances, there is no other evidence available on record against the present applicant. In view of the

same, the applicant has made out a case for his releasing on bail.

7 Hence, the following order:-

(i) The applicant be released on bail in CR No.594 of 2013 registered with Bandra Police Station on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from jail, the applicant shall attend the Bandra Police Station on every Monday between 10.00 a.m. to 12.00 noon till the conclusion of trial.

(iii) The applicant shall attend all dates before the Trial Court.

(iv) Any two consecutive defaults, shall attract the provisions of Section 439 of Cr. P.C.

(v) The application is allowed in the aforesaid terms.

8 The learned APP to communicate the aforesaid order to the Directorate of Public Prosecution by all possible modes.

(A.S. GADKARI,J.)