

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

CRIMINAL BAIL APPLICATION NO. 1196 OF 2016

Mr. Anjum Kutubuddin Makrani

... **Applicant.**

Versus

The State of Maharashtra

... **Respondent.**

Ms. Sudha Dwivedi for Applicant.

Mr. Arfan Sait, Asst. Public Prosecutor for Respondent-State.

CORAM : A.M. BADAR, J.

DATED : 7TH JULY, 2016.

P.C. :

1] Applicant/accused in Crime No. I-288 of 2012 for offences punishable under Section 302, 307, 326, 323, 504, 506 read with 34 of Indian Penal Code (IPC) and under Section 37(1) (a), 135 of the Bombay Police Act and under Section 4 and 25 of the Indian Arms Act, by this application is praying for releasing him on bail for a period of three months for undertaking surgery for removal of implant from his right hand.

2] The learned Counsel for the applicant pointed out certificate issued by Nashik Road Central Prison Hospital and

contended that there was pain and swelling in upper end of tibia with Pain in Right Forearm of the applicant. He further argued that implant in right hand of the present applicant is required to be removed by undergoing surgical process and therefore the applicant needs to be released on temporary bail.

3] The learned Asst. Public Prosecutor, on last occasion, was directed to seek instructions in the matter.

4] The learned Asst. Public Prosecutor argued that the earlier bail application of the present applicant was withdrawn after hearing and this Court at that time was pleased to direct the learned Sessions Judge to expedite the trial. In submission of the learned Asst. Public Prosecutor now trial has began and there are three eye witnesses to the incident in question. The learned Asst. Public Prosecutor sought leave to place the documents on record regarding medical treatment of the present applicant. Leave granted.

5] It is seen from the documents placed on record by the learned Asstt.Public Prosecutor, Doctor Utkarsha, Orthopedic Surgeon attached to Civil Hospital Nashik has reported the Civil Surgeon that implant in the hand of the present applicant can be removed because

there is union of fracture injury which occurred prior to six years. Doctor Utkarsha further reported that the applicant is not willing to undergo surgery by getting admitted in the Civil Hospital Nashik. It is also seen that on 30/06/2016 the present applicant had given in writing to the Civil Surgeon a letter disclosing that he did not want to undergo surgical procedure at Civil Hospital for some reason.

6] It is thus, clear that implant in right hand of the applicant can be removed at Civil Hospital Nashik and the authorities have taken steps to send the applicant to Civil Hospital Nashik. But it is the applicant who is not willing to take treatment at Civil Hospital Nashik.

7] The learned Asst. Public Prosecutor has pointed out that eye witnesses are being examined before the Sessions Judge Nashik. At this stage it will not be proper to release the applicant on temporary bail, particularly when the necessary medical facility is available at Government Medical College at Nashik. Hence the order;

(a) Criminal Bail Application is rejected.

(A.M. BADAR, J.)