

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.871 FO 2016
IN
CRIMINAL APPEAL NO.341 OF 2016

Gulam Akbar Abdul Sattar Khotal. .. Applicant
Vs.
State of Maharashtra. .. Respondent
—
Ms. Rebecca Gonsalves for the Applicant.
Ms. Rohini Salian, Special Public Prosecutor for the State.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 1ST AUGUST 2016

PC.

1. Heard learned counsel appearing for the Applicant and the learned Special Public Prosecutor for the Respondent.

2. The Applicant is the Appellant in the Criminal Appeal No.341 of 2016. The Applicant is the original Accused No.4. The Applicant has been convicted for the offences punishable under Sections 3(3) and 4 of the Prevention of Terrorism Act, 2002 (for short “the POTA Act of 2002) as well as Section 5(a) of the Explosive Substances Act, 1908 and Sections 3 and 7 read with 25(1-B)(a) of the Arms Act, 1959 and has been sentenced to suffer rigorous imprisonment for 10 years for both the offences under the POTA Act of 2002. All substantive sentences have been ordered to run concurrently. This is an Application

for grant of bail pending the final disposal of the Appeal. The submission of the learned counsel appearing for the Applicant is that out of the substantive sentence of 10 years, the Applicant has already undergone the sentence for 6 and 1/2 years. She pointed out that the Applicant was enlarged on bail under the order dated 4th May 2009 passed by the learned Special Court under the POTA Act of 2002 and was on bail till the conclusion of the trial. The learned Special Public Prosecutor has opposed the bail application by pointing out that the serious offences have been established against the Applicant. On instructions, she did not dispute that the Applicant has spent about 6 and 1/2 years in the custody. On a query made by this Court, on instructions, she states that though earlier, the Applicant was an activist of SIMI, apart from the case in hand, there are no antecedents of the Applicant to the knowledge of the Respondent.

3. The Appeal is of the year 2016. Considering the pendency of very old Appeals in this Court, the same is not likely to reach hearing atleast for 4 to 5 years. Moreover, there is no material on record to show that the bail granted to the Applicant was misused by him during the pendency of the trial. As stated earlier, there are no antecedents of the Applicant.

4. The learned Special Public Prosecutor submits that if this Court is inclined to grant protection to the Applicant, stringent conditions may be imposed.

5. Considering what is stated above, a case is made out for grant of bail to the Applicant subject to compliance with the stringent terms and conditions.

6. Accordingly, we dispose of the Application by passing the following order:-

ORDER :

- (a) Pending the final disposal of the Criminal Appeal No.341 of 2016, the execution of the substantive sentence is suspended and the Applicant shall be enlarged on bail subject to executing a PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one solvent surety in the like amount;
- (b) The bail is granted subject to condition of the Applicant filing an undertaking in this Court within a period of three weeks from today that he will not indulge in any illegal activities;

- (c) The aforesaid relief is granted subject to condition that if the Applicant is holding a passport, he shall surrender the said passport to the Registrar (Judicial-I) of this Court within a period of three weeks from today. If the Applicant is not possessing a passport, he shall file an affidavit to that effect within a period of three weeks from today;
- (d) The bail is granted subject to condition that the Applicant shall not leave India without seeking prior permission of this Court;
- (e) The bail is granted subject to further condition that the Applicant shall remain present before the Special Court under the Prevention of Terrorism Act, 2002, for Greater Mumbai at 11.00 a.m. on first Monday of the months January and July of every calender year till the disposal of the main Appeal;
- (f) In the event, the Applicant fails to report as aforesaid, the Special Court under the POTA Act of 2002 for Greater Mumbai shall immediately submit

a report to the Registrar (Judicial-I) of this Court which shall be immediately brought to the notice of the concerned Court;

- (g) In the event, the Applicant commits any breach of the terms and conditions as aforesaid, we grant liberty to the Respondent to apply for cancellation of the bail granted to the Applicant.

(A.A. SAYED, J)

(A.S. OKA, J)