

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1538 OF 2016
WITH
CRIMINAL APPLICATION NO. 678 OF 2016

Arun Mahendra Kumar Singh
& Anr.

.... Accused/Applicants

Versus

State of Maharashtra

.... Respondent

Mr. Ramesh Siroya a/w Jayesh Rathod I/b Vijendra Mishra, for
Accused/Applicants.

Mr. Deepak Thakare, APP for State.

CORAM : A. S. GADKARI, J.
DATE : 22nd AUGUST, 2016

P. C.

1. This is an application for bail under Section 439 of Criminal Procedure Code in CR No. 417/16 and thereafter converted in CR No. 55 of 2016 of E.O.W. Unit-V originally registered with Dindoshi Police Station, Mumbai under Sections 420, 120 (B), 34 of Indian Penal Code read with Section 23 (1) of Securities Contract Regulation Act, 1956 and now being investigated by the Economic Offences Wing Unit-V, Mumbai.

2. The applicant is arrested on 9/6/2016. He was produced before the learned Magistrate on 10/6/2016. The maximum sentence for the offences alleged against the applicant is upto ten

years of imprisonment. During the course of arguments of the present applicant, it was noticed that the period of 60 days as contemplated under Section 167 (2) (a) (ii) of Criminal Procedure Code came to an end on 8/8/2016. The applicant was thereafter produced for remand as contemplated under Section 309 of Criminal Procedure Code before the Magistrate on 12/8/2016 by way of video conferencing. The record clearly discloses that on 8/8/2016 an infeasible right as contemplated under Section 167 (2) (a) (ii) of Criminal Procedure Code is accrued in favour of the applicant. Though the applicant did not file an application for releasing him on bail under Section 167 (2) of Criminal Procedure Code on 8/8/2016 or immediately thereafter, it was necessary on the part of the concerned Magistrate to apprise the applicant about the right accrued in his favour on 8/8/2016. The record reveals that the same has not been done.

3. It is the settled position of law that in every case in which offence is punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, provisions of Section 167 (2) (a) (ii) of Criminal Procedure Code will be attracted and if investigation in such case, is not completed within a period of sixty days, no Magistrate shall authorize the detention of the accused person beyond the said period and the accused person will have to be released on bail, if he is prepared to furnish bail.

4. As stated earlier though the present application was filed

under Section 439 of Criminal Procedure Code for regular bail, this Court noticed that an indefeasible right has been already accrued in favour of the applicant as the investigating agency has not filed a final report as contemplated under Section 173 (2) of Criminal Procedure Code within the stipulated period of 60 days.

5. In view of the above, the applicant is entitled to be released on bail under Section 167 (2) (a) (ii) of Criminal Procedure Code.

Hence, the following order.

ORDER

- (a) The applicant shall be released on bail in CR No. 417 of 2016 (converted CR. No. 55 of 2016) registered with Dindoshi Police Station, Mumbai on his furnishing a P. R. Bond of Rs. 50,000/- with two solvent local sureties in the like amount.
- (b) After his release from jail, the applicant shall attend the Investigating Officer once in a month on every first Monday of the said month between 11.00 a.m. to 2.00 p.m. till filing of the chargesheet. After filing of the chargesheet the applicant shall attend the Trial Court once in three months on first Monday of the said month between 11.00 a.m. to 12.00 noon and shall also attend all the Court dates before the Trial Court.
- (c) The applicant is permitted to furnish cash bail before the Trial Court for a period of four weeks from today and during the

said period, the applicant shall complete the procedure for furnishing sureties.

The application is allowed in the aforesaid terms.

6. All the concerned to act upon an authenticated copy of this order.

(A. S. GADKARI, J.)