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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1635 OF 2016

Mohan Balraj Mridha

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. P.R. Dave for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. R.N. Patil, Police Inspector, Dr. D.B. Marg Police Station present.

CORAM: A.S. GADKARI, J.

DATE : 21st September 2016.

P.C.

1 This is an application under Section 167(2)(a) of Cr. P.C. for mandatory bail. The applicant is an accused in CR No.20 of 2016 registered with D.B. Marg Police station, Mumbai under Sections 363, 370(1)(b), 342 read with 34 of the Indian Penal Code and under Sections 3,4 and 5 of the Prevention of Immoral Traffic Act.

2 The applicant is arrested on 17.1.2016 and was produced before the learned Magistrate on 18.1.2016. The sentence prescribed under

various sections in the present crime is above 10 years and therefore the period of 90 days as contemplated under Section 167(2) of Cr. P.C. is applicable for filing chargesheet before the Court of competent jurisdiction. The period of 90 days would come to an end on 16.4.2016. The applicant preferred an application as contemplated under Section 167(2) of Cr. P.C. before the learned Magistrate on 13.4.2016 i.e. on the 87th day. The said application was pending for passing appropriate orders on it before the learned Magistrate. The prosecuting agency filed the chargesheet on 20.4.2016 i.e. on 94th day. The record reveals that the learned Magistrate rejected the application preferred by the applicant under Section 167(2) on 20.4.2016.

The applicant thereafter preferred an application bearing Bail Application No.1012 of 2016 under Section 167(2) of Cr. P.C. before the Sessions Court which came to be rejected on 13.5.2016. In view of the fact that the period of 90 days had come to an end on 16.4.2016 and the prosecuting agency had filed chargesheet on 94th day i.e. on 20.4.2016, an indefeasible right had accrued in favour of the applicant on 16.4.2016. According to me it was incumbent on the part of the learned Magistrate to apprise the applicant about his indefeasible mandatory right accrued in his favour under Section 167(2) of Cr. P.C.

3 As the infeasible right had already accrued in favour of the applicant on 16.4.2016, the applicant cannot be further detained in jail custody and has to be released on bail as contemplated under Section 167(2)(a) of Cr. P.C.

4 Hence, the following Order:

(i) The applicant be released on bail in CR No.20 of 2016 registered with D.B. Marg Police Station, Mumbai 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 the jail, the applicant shall attend the D.B. Marg Police Station once in month i.e. on every 1st Monday of the said month between 11.00 a.m. to 1.00 p.m.

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

(iv) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail.

5 The Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)