

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1823 OF 2016

Mr. Chandan Chachalani	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.P.Mundargi, Senior Counsel, i/b. Mr. Amey Deshpande, Advocate for the applicant.

Mr.Prashant Jadhav,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 23rd December, 2016.

P.C.

Heard the learned Senior Counsel for the applicant and the learned APP.

2. The applicant herein is an accused in Crime No.537 of 2015 registered at Pimpri police Station for the offences punishable under Sections 406, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code on 2.10.2015.

3. The applicant was arrested on 15.10.2015 and was in police custody till 21.10.2015. The applicant was enlarged on bail by the learned

4th Joint Judicial Magistrate First Class, Pimpri, by an order dated 3.3.2016, a condition was imposed upon the applicant that the applicant shall not leave Pune District without prior permission of the Court.

4. On 27.4.2016, the State of Maharashtra, being aggrieved by the order dated 3.3.2016, had filed an application before the Sessions Court at Pune under Section 439 sub-clause (2) of Cr.P.C. seeking cancellation of bail granted in favour of the applicant. It was contended by the State of Maharashtra that initially two successive Bail Applications filed by the present applicant were rejected by the Judicial Magistrate, First Class, Pimpri. The application which was filed even after filing of charge sheet was also rejected. It was submitted that the applicant had filed Bail Application No.180 of 2016 before this Court seeking enlargement on bail. The application seeking enlargement on bail was also filed before the Judicial Magistrate, First Class, Pimpri, without informing the Court that an application seeking enlargement on bail is pending before the High Court. That the applicant was enlarged on bail on 3.3.2016 and the application which was pending before the High Court was withdrawn on 8.3.2016. According to the State, the applicant had played a fraud on the Judicial Magistrate, First Class, Pimpri by suppressing the fact that his application

for bail was pending before the High Court as the Sessions Court had also rejected the application filed by the applicant after filing of charge-sheet. It was contended that the applicant has been enlarged on bail solely on the ground that the record is voluminous and there are 23 witnesses to be examined by the prosecution. According to the State, that would not be a good ground for enlarging the applicant on bail as the amount involved in the present case is to the tune of Rs.75 lakhs and that the applicant is facing charges of forgery, fabrication of documents and cheating.

5. The learned Sessions Judge had taken into consideration the fact that there has been suppression of facts by the applicant and that it was not demonstrated before the Judicial magistrate, First Class that the Sessions Court had rejected his application on 17.12.2015 and being aggrieved by the said order he had approached the High Court by filing Bail Application No.180 of 2016. It was in these circumstances that the order dated 3.3.2016 was recalled. Hence, this application.

6. The learned Senior Counsel appearing for the applicant submits that although the offences alleged against the present applicant are triable by a Court of Judicial Magistrate, First Class, the applicant has been

in custody for almost five months. It is submitted, upon instructions, that the applicant had no intention of suppressing the facts. The learned Senior Counsel rightly submits that the applicant was in custody and his family members being disturbed by the said fact were making every effort to get the applicant enlarged on bail. The family members and relatives had left no stone unturned to seek relief in favour of the applicant. There was miscommunication between the Advocate representing the applicant in the High Court as well as the Advocate representing the applicant before the learned Judicial Magistrate, First Class. The learned Advocate on record appearing for the applicant, upon instructions from the Advocate representing the applicant before the Judicial Magistrate, First Class, makes a solemn statement at Bar that the learned counsel appearing for the applicant before the Judicial Magistrate, First Class, had made a statement at bar that the application filed by the applicant before the Sessions Court has been rejected on two occasions. It was also orally submitted that the application is pending before the High Court. The learned counsel has also submitted that he would file an affidavit of the Advocate representing the applicant before the Magistrate. However, this Court does not find it necessary as faith is reposed in counsel appearing before this Court.

7. The learned Senior Counsel for the applicant submits that the applicant had not left the jurisdiction of Pune as directed by the learned Judicial Magistrate, First Class, Pimpri. Although the bail was cancelled by an order dated 6.8.2016, the applicant was not apprehended by the police till 30.8.2016 and, therefore, this application was filed on 31.8.2016.

8. According to the learned APP, the applicant should surrender to the order dated 6.8.2016. Learned Senior Counsel submits that after taking into consideration the reasons assigned by the Sessions Court in the order dated 6.8.2016, the Magistrate will reject the prayer for being enlarged on bail and the applicant would have to undergo incarceration despite the fact that he is enlarged on bail on merits and therefore a request is made to take the applicant in custody.

This court cannot be oblivious of the fact that Non-bailable Warrant is not issued against the applicant since 6.8.2016 or else he would have to appear before the Magistrate seeking cancellation of NBW. Hence, this Court is inclined to take the applicant in custody. The learned Senior Counsel has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Sandeep Kumar Bafna vs. State of Maharashtra & Anr. (2014) 16 SCC 623** held as follows :-

“S. 439 should, therefore, be so construed as conferring jurisdiction on Sessions Court/High Court to grant relief to such accused upon taking him in custody, more so when there is no provision prohibiting his production before the court – When accused has a right to seek bail, there has to be a remedy – Personal liberty of accused under Art. 21 cannot be taken away on presumptive or conjectural premise.”

“He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.”

9. The learned Senior Counsel has filed an application before this Court requesting this Court to take the custody of the applicant. The applicant is present before the Court. The applicant is taken into custody. Thereafter, the applicant has filed an application under Section 437 of Cr.P.C.

10. The learned APP has filed his Say on behalf of the prosecution and has contended that the applicant is in habit of cheating. That he is having criminal antecedents. That the applicant has played fraud upon the Court and has obtained the order of bail and, therefore, he does not deserve to be enlarged on bail. This Court has taken into consideration the fact that the applicant has been in custody for almost 5 months and, therefore, pursuant to the observations of the Hon'ble Apex Court in the case of

Sandeep Kumar Bafna (cited supra), this Court is inclined to enlarge the applicant on bail under Section 437 of Cr.P.C. Hence, the following order :-

ORDER

- (i) The order dated 6.8.2016 passed by the Addl. Sessions Judge, Pune, is hereby quashed and set aside.
- (ii) The applicant be enlarged on bail on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees one lakh) and one or more solvent sureties in the like amount.
- (iii) The applicant is granted three weeks' time to furnish sureties.
- (iv) The applicant shall also pay cost of Rs.10,000/- in this Court within three weeks from today.
- (v) The applicant shall not leave the Pune Jurisdiction without prior permission of the Court.
- (vi) The applicant shall also surrender his Passport (if any) to the Investigating Officer.

11. Both the applications are taken on record.

12. The learned Advocate on record undertakes to get the applications registered during the course of the day. Office is directed to register the said applications.

The Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)