

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2202 OF 2015

Vandek Laxman Shinde	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Prabhakat Jadhav, Advocate for the applicant.

Mr. Prashant Jadhav, APP, for the State.

Mr. Durganath R. Sali, PSI, Vaduj Police Station, Satara present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 16th November, 2016.

P.C.

The learned counsel Mr. Prabhakar Jadhav submits that he has been engaged by the applicant to espouse the cause of the applicant. Hence, the Advocate appointed as an amicus curiae stands discharged.

2. Heard the learned Advocate. At the outset, it is submitted that non-bailable warrant issued by this Court on 20.9.2016 was executed by Vaduj Police Station on 20.10.2016. The applicant was produced before the Addl. Sessions Judge, Vaduj on 21.10.2016 and the learned Sessions Judge had directed the PSI to produce the accused-applicant herein before the Hon'ble High Court in view of the order dated 20.9.2016. In fact, this Court had only directed the agency to execute the non-bailable warrant and

there was no order to produce the accused-applicant before this Court.

2. This Court (Coram: Revati Mohite Dere, J.) had by an order dated 7.4.2016 issued notice to the accused as to why his bail should not be cancelled. Thereafter, a report was received that his whereabouts cannot be traced as he is not found at the given address and, therefore, this Court had issued non-bailable warrant against the accused-applicant.

4. Today, the learned counsel Mr. Jadhav submits that he has been engaged by the applicant to plead on his behalf. The learned counsel has placed on record the medical certificate dated 7.11.2015 purportedly issued by Dr. Akshay Tandwadkar, whose qualification is B.H.M.S. It appears from the bare perusal of this certificate that the letter-head of Dr. Shashikant Tandwadkar has been used by Dr. Akshay R. Tandwadkar. The learned counsel submits that Shashikant happens to be the father of Akshay. However, the initials are not matching. This certificate assumes importance for the simple reason that the said certificate was taken into consideration by the learned Sessions Judge while granting bail to the accused who has been charge-sheeted for the offences punishable under Sections 376, 354 and 506 of the Indian Penal Code. The certificate reads as follows :-

“My patient Mr. Shahrukh Shinde c/o weight loss. Generalised weakness with paraplegi like symptom. I had given necessary treatment in my OPD. Still patient not getting relief. Kindly examine the patient and do needful.”

The said reference letter was to R.M.O. Primary Health Centre, Usegaon. There is no material on record to even remotely indicate that the patient i.e. son of the applicant had visited the Primary Health Centre at Usegaon. It is not known as to how the Sessions Court could even take such a certificate into consideration for enlarging the accused on bail in serious offences like 376 of IPC.

5. The learned counsel for the applicant has placed on record Exhibit 8, an application filed by the original complainant – Anita Raja Shinde, which was taken into consideration by the learned Sessions Judge while granting bail. The complainant had filed an application contending therein that the son of the applicant is down with paralysis. While the accused was in custody, his daughter had expired and his wife had left the matrimonial abode. The complainant had further contended that in order to take care of his son, he should be enlarged on bail. It was further contended that the first information report alleging offence under Section 376 of IPC was really due to misunderstanding and that she does not wish to prosecute

it any further. In fact, at that stage, the learned Sessions Judge ought to have issued notice to the complainant and initiate proceeding under Section 340 of Cr.P.C. as to why she should not be prosecuted under Section 192 of IPC. It is not clear that the accused had influenced the victim and there was tampering with material evidence.

6. The conduct of the applicant needs to be taken into consideration at this stage. It is pertinent to note that at the time when an application seeking bail was filed before the Sessions Court, an application under Section 439 of Cr.P.C. was pending before this Court. The same was not withdrawn prior to filing an application before the Sessions Court and the applicant was prosecuting simultaneously the applications seeking bail. At that stage, there was a request for withdrawing the application the Hon'ble Predecessor Bench had issued notice to the applicant. The reply filed by the applicant was omnibus and did not inspire confidence. Today, after seeing the relevant documents, it is all the more clear that the accused-applicant has misled the Court. Hence, the applicant does not deserve enlargement on bail by this Court. In any case, there was a prayer for withdrawing Criminal Application No.2202 of 2015 before this Court .

7. After taking into consideration all the relevant facts and the submissions advanced across the Bar, the Application No.2202 of 2015 stands dismissed. The order dated 11.12.2015 passed by the Addl. Sessions Judge, Vaduj, is quashed and set aside.

8. Office to communicate this order to the Court of Addl. Sessions Judge, Vaduj, forthwith.

(SMT. SADHANA S.JADHAV, J.)