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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO. 2493 OF 2015**

|                               |               |
|-------------------------------|---------------|
| Fuzail Ahmed Suhel Ahmed Khan | ...Applicant  |
| Versus                        |               |
| The State of Maharashtra      | ...Respondent |

Mr.Sandeep Dere, for the Applicant

Ms.P.P.Shinde, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 13<sup>th</sup> JULY, 2016***

**P.C. :**

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. This is the second bail application. The first bail application was dismissed as withdrawn. The order passed below the first bail application preferred by the applicant being Criminal Bail Application No.1313 of 2015 reads thus :-

1. Learned counsel for the Applicant, after arguing for some time, seeks leave to withdraw this application.

2. Accordingly, the Application is dismissed as withdrawn.

3. In case the trial does not conclude within a reasonable time, for no fault of the Applicant, the Applicant shall be at liberty to file a fresh application, which will be decided on its own merits.”

3. Learned Counsel for the applicant submitted that the only allegation qua the applicant is that he gave information on telephone to the co-accused and that he surveyed the spot and gave tips to the co-accused regarding the movements of the complainant. He submitted that some of the co-accused have been enlarged on bail by the Sessions Court. He further submitted that the applicant was arrested only when he was going to sell the gold ornaments (worth Rs.8 lakhs), which were allegedly stolen from the complainant. The said gold ornaments were seized from the applicant.

4. Learned APP opposed the bail application. She submitted that there are CDR records to show that the applicant was in contact with the co-accused – Bhakti Jana and Sarvar Khan before and after the commission of the dacoity. She submitted that the applicant has 3 antecedents, which

are of a similar nature.

5. Learned Counsel for the applicant submitted that in all the said 3 cases, the applicant has been acquitted. He submitted that the charge has not been framed.

6. Perused the papers. The first bail application was dismissed as withdrawn, as this court was not inclined to grant bail to the applicant. However, liberty was granted to the applicant to file a fresh application for bail, if the trial did not conclude within a reasonable time. The said order was passed on 31<sup>st</sup> August 2015 and the present application was filed immediately within two months i.e. on December, 2015. From the material on record, it appears that the applicant was in touch with the co-accused on their mobile, before and after the commission of the offence, and that the applicant had surveyed the spot and had given tips to the co-accused, regarding the movements of the complainant. The applicant was apprehended red handed with the gold ornaments, which were stolen. The said ornaments were seized under a panchanama. It appears from the Roznama tendered by the learned counsel for the applicant that the trial

could not commence, as the accused were not produced from judicial custody from time to time, requiring the learned Judge to give direction to the Superintendent, Talaja Prison, directing them to produce the accused. It appears that despite directions on several dates, the accused are not being produced from judicial custody.

7. On merits, considering the material on record, I am not inclined to enlarge the applicant on bail and hence the application is rejected. However, a direction is given to the Superintendent, Talaja Prison and Superintendent Arthur Road Prison where the accused are lodged presently, to ensure that all the accused are produced on all the dates before the learned Sessions Judge, before whom the Sessions Case, being Sessions Case, No.121 of 2015 is pending.

8. Learned APP to communicate the above order to the Superintendent, Talaja Prison, Superintendent Arthur Road Prison as well as to the Additional Commissioner of Police, LA, Naigaon, Mumbai, who will ensure that all the accused are produced before the learned Sessions Judge on every date of hearing.

9. Accordingly, the Application for bail is rejected and disposed of as such.

**REVATI MOHITE DERE, J.**