

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APL) NO.231 OF 2016

(Bharatbhai s/o Kodarbhai Parmar ..vs.. State of Maharashtra, through PSO, PS Old City, Akola)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 31-03-2016

Heard Shri P.W. Mirza, Advocate for the applicants and Shri R.S. Nayak, Additional Public Prosecutor for the non-applicant/State.

2. The applicants had filed Misc. Criminal Application No.156/2016 before the Sessions Court praying for grant of bail. This application is allowed by the learned Additional Sessions Judge by the order dated 15-03-2016 and it is directed that the applicants be released on bail on furnishing P.R. Bond for Rs.25,000/-, with two solvent sureties in the like amount, out of which one shall be the resident of Akola.

3. The applicants filed Misc. Criminal Application No.32/2016 before the Sessions Court praying for relaxation of the condition that out of two solvent sureties, one shall be the resident of Akola. The learned Additional Sessions Judge, by the order dated 17-03-2016, has dismissed the application and has refused to relax the condition observing that the

applicants are residents of Gujarat and if the condition is relaxed, it would be impossible to secure their presence during the course of investigation as well as during the pendency of trial.

4. Shri P.W. Mirza, Advocate for the applicants relying on the order passed by this Court in the case of ***Raju Bihari @ Rajesh Kumar vs. State of Goa and others*** reported in ***2011(4) Bom.C.R. (Cri.) 574***, has submitted that imposition of a condition which is not capable of being complied, has the effect of denying to the accused the entitlement of being released on bail.

5. Though the learned Additional Public Prosecutor has opposed the application filed by the applicants, he has not been able to counter the legal submissions made by the learned Advocate for the applicants.

Considering the propositions laid down in the order passed by this Court in the case of ***Raju Bihari @ Rajesh Kumar vs. State of Goa and others***, in my view, the application filed by the applicants is required to be allowed in the following terms :

- i) The order passed by the learned Additional Sessions Judge in Misc. Criminal Application No.32/2016 on 17-03-2016 is set aside.
- ii) Misc. Criminal Application No.32/2016 is allowed and the condition that out of the two

solvent sureties in respect of each of the applicant, one shall be the resident of Akola, is relaxed.

- iii) The applicants having been arrested in Crime No.24/2016 registered by the non-applicant, they be released on bail on furnishing P.R. Bond for Rs.25,000/- each and two solvent sureties in the like amount for each of them.
- iv) The applicants shall surrender their Passports to the Investigating Officer before they are released. If the passport authority has not issued Passports in the names of the applicants, they shall submit affidavit to that effect to the Investigating Officer before they are released.

Though this condition is not put by the learned Additional Sessions Judge while granting bail, as the order passed by the learned Additional Sessions Judge is being modified and some condition imposed by him is relaxed, the present condition is imposed.

- v) The applicants shall attend the sessions trial regularly unless granted exemption by the Sessions Court.
- vi) The application is allowed in the above terms.

JUDGE