

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

CRIMINAL APPLICATION (APPLN) NO.51 OF 2015

MOHAMMAD JAVED S/O ABDUL KHALIQUE

V/S

STATE OF MAHARASHTRA, THROUGH P.S.O. BULDHANA CITY POLICE STATION,
BULDHANA AND ANOTHER

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

Court's or Judge's Order

Shri Abdul Subhan, Advocate for the applicant.
Shri S.M. Bhagde, Addl.P.P. for NA No.1/State.
None appears for the NA No.2.

CORAM : Z.A. HAQ, J.

DATED : APRIL 26, 2016.

Heard Shri Abdul Subhan, Advocate for the
applicant and Shri S.M. Bhagde, Additional Public
Prosecutor for the non-applicant No.1/State.

None appears for the non-applicant No.2.

The applicant has filed this application
under Section 439(2) of the Criminal Procedure Code
praying that the order passed by the learned Additional
Sessions Judge on 22.5.2015 be set aside and the bail
granted to the non-applicant No.2 be cancelled.

The learned Advocate for the applicant has
submitted that the non-applicant No.2 had earlier
approached this Court by filing Criminal Application
(ABA) No.456 of 2014 which was withdrawn on
11.9.2014 and then again Criminal Application (ABA)

.....2/-

No.558 of 2014 was filed which was withdrawn on 8.12.2014. It is submitted that the learned Additional Sessions Judge has committed an error in entertaining and allowing the application filed by the non-applicant No.2, overlooking that there was no change in the circumstances. In support of the submission, reliance is placed on the judgment given in the case of Kalyan Chandra Sarkar ..vs.. Rajesh Ranjan alias Pappu Yadav and another reported in (2005)2 SCC 42 and the judgment given in the case of Kamlesh s/o Dhirajlal Gandhi ..vs.. State of Maharashtra and another reported in 2007(2) Mh.L.J. 850.

Shri S.M. Bhagde, Additional Public Prosecutor has pointed out that the non-applicant No.1-State of Maharashtra has filed Criminal Application No.60 of 2015 before this Court praying that the pre-arrest bail granted to the non-applicant No.2 be cancelled as she has not abided by the conditions imposed by the Sessions Court while granting bail and the application is rejected by this Court by the order dated 10.9.2015 granting liberty to the non-applicant No.1-State of Maharashtra to file appropriate application before the Sessions Court.

The submissions made on behalf of the applicant relying on the judgment given in the case of

Kalyan Chandra Sarkar (cited *supra*) cannot be accepted. The proposition laid down in the above judgment that even in bail matters, the findings and decisions of the superior Court are binding on the subordinate Courts and the same issue cannot be agitated again unless there is material change in the situation necessitating a different view, is well established. However, in the present case, there is no decision or finding of this Court in the earlier matters filed by the non-applicant No.2, as the Criminal Application (ABA) No.456 of 2014 and Criminal Application (ABA) No.558 of 2014 were withdrawn by the applicants. The judgment given by this Court in the case of Kamlesh s/o Dhirajlal Gandhi (cited *supra*) also does not support the applicant. In paragraph No.20 of this judgment, it is recorded as follows:-

“As already discussed hereinabove, it is well settled that insofar as the application under Section 439 of the code is concerned, successive application on new fact situations or change in law could be entertained. As already discussed above, the provisions of sections 438 and 439 of the Code are almost analogous. The Constitution Bench of the Supreme Court in Gurubaksh Singh's case has held that since denial of bail amounts to

deprivation of personal liberty the Court should lean against imposition of unnecessary restrictions on the scope of section 438 of the Code especially when not imposed by the legislature, I am, therefore, inclined to hold that successive applications for anticipatory bail, after rejection of earlier application, would be tenable in law. However, as held in Kalyan Chandra Sarkar's case the said application is tenable only when there is a change in the facts situation or law which requires earlier view being interfered with or where the earlier view has become obsolete. In that view of the matter, the present applications are tenable in law."

Thus, it is held that successive application under Section 438 of the Code of Criminal Procedure is maintainable, the only rider being that there should be change in the circumstances. Though the learned Advocate for the applicant has argued that there are no change in the circumstances, I find that the learned Additional Sessions Judge has recorded in paragraph No.7 of the order passed by him the changed circumstances, which conclusions of the learned Additional Sessions Judge cannot be faulted with.

The State of Maharashtra has not sought

cancellation of pre-arrest bail granted to the non-applicant No.2 on the ground that the custody of the non-applicant No.2 is required for further investigation. The applicant has also not been able to substantiate that the custody of the non-applicant No.2 is required for further investigation.

In view of the above, I am not inclined to consider the prayer made by the applicant. The application is dismissed.

JUDGE

!! BRW !!

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