

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

CRIMINAL BAIL APPLICATION NO. 2060 OF 2016

Ramsurat Ramnarayan Yadav & ors. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kaushik M. Mhatre, advocate for Applicants.

Mrs. P.P. Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : AUGUST 23, 2017**

P.C.:

1 On 10/2/2017 this Court had observed that the Applicant had not only availed of the remedies before the Sessions Court as well the High Court. But in the application before the Sessions Court, the advocate for the applicant has given an undertaking as follows :

“16) The applicant has not filed any other proceeding in this Hon'ble Court or in Hon'ble Mumbai High Court or in the Hon'ble Supreme Court of India touching the present subject matter of this Bail Application; however Applicants hereby undertake to withdraw bail Application No.2060/2016 filed before Hon'ble High Court as simply withdrawn in case relief prayed for in this Bail Application is granted.”

This Court has observed that-

“There was condition precedent for withdrawing the Application No. 2060 of 2016 and the same was incorporated in paragraph 16 of the application.”

2 Needless to say that this Court had passed an order that pendency of this application shall not be construed as an impediment for proceeding with further stages of trial before learned Sessions Court. It was in this circumstance that all the Sessions Judges were given a word of caution while granting bail, so as to verify whether alternative remedy has been availed of simultaneously.

3 Learned APP had submitted that since the applicants have played a fraud on the Court, they would file application under section 439(2) of the Code of Criminal Procedure, 1973. Taking into consideration the submission of the learned APP this Court had refrained from taking any action against the applicants on that day. A notice was issued to the applicants as to why the bail granted in their favour vide order dated 11/11/2016 should not be recalled.

4 The matter was placed on board on 10/3/2017. None appeared for the applicant. On 3/4/2017 the learned Counsel Mr. Kaushik Mhatre had contradicted the facts recorded in the Order dated 13/1/2017, when the matter was heard by Justice A.S. Gadkari. The matter has been placed before this Court on 17/4/2017. The learned Advocate sought an adjournment. The matter was adjourned from time to time. Upon Instructions of the Additional Public Prosecutor to the Senior Inspector of Police, notice was issued to the applicants to answer as to why bail granted in their favour should not be cancelled.

5 Today the learned Counsel for the Applicants initially submitted that the applicants had not received any notice. However, it is subsequently submitted that the applicants are not in contact with the learned Advocate and therefore, the notice is not replied.

6 Be that as it may. The learned Counsel for the applicants justifies the submissions made before the Sessions Court that in the eventuality the bail is granted by the Sessions Court, he would

withdraw the application filed before the High Court. According to the learned Counsel, there is no suppression of facts and he has brought it to the notice of the learned Judge that an application is pending before the High Court and therefore, according to the learned Counsel it was the duty and discretion of the learned Sessions Judge to consider the prayer for grant of bail.

7 It appears that the entire responsibility is thrown upon the learned Sessions Judge who had granted bail, as if to say that the learned Counsel had committed no error in intimidating the Court by submitting that he would withdraw the application pending before this Court, provided the Sessions Court grants bail. Since Mr. Mhatre, learned Counsel for the applicants vehemently justifies the submission made before the Sessions Court, this Court is of the opinion that the Applicants cannot be blamed for it as the application under section 439 of the Code of Criminal Procedure, 1973 was drafted and filed by the learned advocate and the contentions therein are being accepted and justified. In view of this, this Court is not inclined to cancel the bail granted in favour of the the applicants, particularly since the

State has not taken any steps to file an application under section 439 (2) of the Code of Criminal Procedure, 1973 although on the date of hearing the State was of the opinion that the applicants have played fraud on the court. With these observations, the Criminal Application stands disposed of.

(SMT. SADHANA S. JADHAV,J)