

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 182 OF 2017

Rakesh Kapoor	...	Applicant
	Vs.	
The State of Maharashtra	...	Respondent

Mr.Subodh Desai, Counsel a/w Mr. Chandan Singh Shekhawat & Advocate
Shradha Achliya i/b. ALMT Legal, Advocate for the applicant.
Ms.Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 20th January, 2017.

P.C.

Heard the learned counsel for the applicant.

2. The impugned order dated 17.1.2017 is placed before this Court. The said order is taken on record and marked "X" for the purpose of identification. The Hon'ble Single Bench of Justice A.M.Badar is sitting in Division Bench today. The matters listed before Hon'ble Justice A.M. Badar are placed before the Hon'ble Smt. Justice R.P.SondurBaldota. However, Hon'ble Smt. Justice SonduBaldota is not available for judicial work today, and therefore the present application is being heard by this Court.

3. The applicant herein is convicted by the Addl. Chief Metropolitan Magistrate, 19th Court Esplanade, Mumbai, by judgment and order dated

10.5.2012 for the offences punishable under Sections 408, 417, 419, 420, 465, 467, 471, 474, 477(A) of the Indian Penal Code and sentenced to R.I. for seven years and pay fine of Rs.10,000/- for the offence punishable under Section 408 of the Indian Penal Code. Being aggrieved by the said judgment, the applicant herein has filed Criminal Appeal No.317 of 2012 which is pending before the Court of Sessions at Mumbai.

4. The applicant herein had filed an application under Section 389 of Cr.P.C. which was allowed by the learned Sessions Judge. The substantive sentence imposed upon the applicant was suspended and he was enlarged on bail on executing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount. The applicant had furnished surety accordingly and continued to be on bail. The applicant herein is a senior citizen who is more than 63 years old. He had filed Writ Petition No.29 of 2016 seeking liberty to examine 8 witnesses. The said application was rejected by the Sessions Court. This Court had dismissed the Writ Petition with a direction that the appeal be heard expeditiously and be disposed of within six months from 4.10.2016.

5. The learned counsel for the applicant fairly submits that due to ill-health of the applicant and the personal difficulties of the lawyer representing him, the matter went unattended on two occasions. He

submits that the surety furnished by the applicant was withdrawn without the knowledge of the applicant. It is submitted that the applicant learnt about it only on the scheduled date of hearing. That on the said scheduled date, the applicant could not furnish the surety immediately and therefore, the applicant was taken into custody by the learned Sessions Judge. The applicant had filed an application below Exhibit 32 seeking enlargement on bail. However, by taking into consideration the fact that one of the surety was withdrawn, the application was dismissed. The hearing of the appeal was expedited and in these circumstances, the application was rejected. The learned Sessions Judge had also taken note of the fact that the Vakalatnama was filed without the signature of the Advocate. The learned counsel representing the applicant had then filed an undertaking to file Vaklatnma. There was change of Advocate on more than two occasions and taking these facts into consideration, the learned Sessions Judge has rejected the application.

6. The learned counsel for the applicant fairly submits that he is not challenging the findings recorded by the learned Sessions Judge. However, on sympathetic grounds, he prays for enlargement on bail as the applicant is diagnosed with Parkinson. He is more than 63 years old. That the applicant is willing to give surety forthwith. It is in these circumstances

that the application deserves to be allowed.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount to the satisfaction of the Sessions Court.

7. The learned counsel for the applicant submits that taking into consideration the health of the applicant, the applicant be enlarged on cash bail of Rs.50,000/- for a period of two weeks within which he shall comply with all the formalities to the satisfaction of the Sessions Court. Order accordingly.

8. Parties to act on an authenticated copy of this order.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)