

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.253 OF 2015

Guraiya Maruti Dasari ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Ghanshyam Upadhyay i/b. Law Juris, Advocate for the Applicant.

Mrs.P.P.Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 2017.

P.C. :

1 This is an application for releasing the applicant/accused on bail during pendency of the trial of the Sessions Case bearing No.74 of 2014 pending on the file of the learned Additional Sessions Judge, Mumbai.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that on 19/08/2014, the charge-sheet against the present applicant was filed and along with said charge-sheet, the Investigator has filed an application of same date (Exhibit 'B' with the record) contending that few new things have come to the light and, therefore, further investigation is necessary.

The learned Advocate submitted that if further investigation was necessary in the matter, then the charge-sheet was not complete and, therefore, the applicant was entitled for release on bail due to non-filing of charge-sheet as per mandate of Section 167(2) of the Code of Criminal Procedure (hereinafter referred to as “Code” for the sake of brevity). For this purpose, the learned Advocate appearing for the applicant has placed reliance on the following Judgments :

- (a) *Sonu Mandanlal Yogi v. State of Maharashtra & Anr.*, All MR (Cri.) 4025.
- (b) *Suaibo Ibow Cassama v. Union of India & Anr.* (1994) 1 Bom.C.R. 64.
- (c) *T.V.Sarma v. Turgakamala Devi* (1976) 0 Cr.L.J. 1247.
- (d) *Izhar Ahmad v. State* (1978) 0 Cr.L.J. 58.
- (e) *Ramdeo Mahto v. State of Bihar* (1978) 0 Cr.L.J. 1074.
- (f) *Satya Narain Musadi v. State of Bihar* (1980) 0 AIR (SC) 506.
- (g) *Narayan v. State of Rajasthan* (1983) 1 Crimes 322.
- (h) *Subhash v. State of M.P.* (1988) 3 Crimes 14.
- (i) *Khimbhadhur Palshiram Thapa v. State of Maharashtra* (1989)3 Crimes 543.
- (j) *M.A.Dharman, son of Appukuttan v. State of A.P.* (1991) 1 ALT 315.
- (k) *Sharadchandra Vinayak Dongre & Ors. V. State of Maharashtra* (1991) 0 Cr.L.J. 3329.

- (l) *A.Narayana Reddy v. State of A.P.* (1992) 0 Cr.L.J. 630.
- (m) *Matchumari China Venkatareddy v. State of A.P.* (1994) 0 Cr.L.J. 257.
- (n) *Raghubir Saran Jain v. State* (1995) 0 Cr.L.J. 4117.
- (o) *S.M.Purtado & Etc. v. Dy.S.P. C.B.I., Cochin & Etc.* (1996) 0 Cr.L.J. 3042.
- (p) *Kalpana Ghosh v. State* (1996) 100 Cal.W.N. 603.
- (q) *Julakanti Brahma Reddy v. State of A.P.* (2001) 2 ALT (Cri.) 329.
- (r) *Ajay Kumar Singh v. State of Jharkhand* (2002) 2 BBCJ (Jhar) 107.
- (s) *Devindrappa v. State of Karnataka* (2004) 0 Cr.L.J. 1506.
- (t) *Punjaram s/o. Ashroba, Asroba Kangne v. State of Maharashtra* (2005) 0 ALL MR (Cri.) 1020.

3 It is further argued that on two dates of remand, the accused was not produced before the Court. He was not produced on 1st August 2014 and 14th August 2014 and, therefore, his detention is illegal.

4 The learned Additional Public Prosecutor opposed the application by contending that the trial is going on and in all five witnesses have been examined by the prosecution.

5 I have carefully considered the rival submissions and also perused the Judgments relied by the learned Advocate appearing for the applicant.

6 In the case in hand, the applicant/accused came to be arrested in Crime No.176 of 2014 of offences punishable under Sections 302 of the Indian Penal Code as well as Sections 4 and 25 of the Indian Arms Act and the charge-sheet came to be filed on 19/08/2014. This fact is not disputed. As such, it is clear that the charge-sheet against the present applicant is filed within 90 days of his first remand. It is seen that on 19/08/2014 itself the Senior P.I. of Kasturba Marg Police Station, Mumbai had preferred an application addressed to the Metropolitan Magistrate, 68th Court, Borivali (West), Mumbai seeking permission for further investigation in crime in question under Section 173(8) of the Code. Merely because such an application is filed, it cannot be said that the charge-sheet is incomplete. In fact, no permission of Magistrate is required for further investigation of the crime. It is by way of courtesy that Investigator might have applied for further investigation of the crime by resorting to the provisions of Section 173(8) of the Code. Therefore, it cannot be said that merely because permission was sought for further investigation, there was no charge-sheet against the applicant/accused.

7 So far as the question of alleged non-production of the

accused during the stage of remand before the Magistrate is concerned, the remedy lies elsewhere.

8 In the wake of this discussion, relief sought on behalf of the present applicant cannot be granted in the facts and circumstances of the instant case.

9 The application is, therefore, rejected.

(A.M.BADAR J.)