

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 297 OF 2016

Avinash Narayan Khandale ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Dilip Shukla i/b. Mr. Vikram V. Tarepatil, for the applicant.

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

Mr. Adhikari, API, EOW Banking-I, Mumbai, present.

CORAM : SMT. SADHANA S.JADHAV,J.
DATE : 11th January, 2017.

P.C.

Heard. The learned counsel for the applicant.

2. On 6.1.2017, the learned APP had, upon instructions, submitted before this Court that the applicant has simultaneously filed an application before the Addl. Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. On perusal of the papers, it appears that the said application was filed on 9.12.2016. The present application is pending before this Court since 11.2.2016. It is pertinent to note that without

withdrawing he present application, the applicant had approached the Court of ACMM on the ground that the co-accused against whom there are similar allegations, had been granted bail.

3. The learned counsel for the applicant submits that the said application was filed before the ACMM due to miscommunication between the Advocates representing the applicant before the High Court and the Court of ACMM. It is also submitted that in para 7 of the application filed before the ACMM, the counsel appearing for the applicant before the ACMM had submitted as follows :-

“That the applicant states that the applicant had filed Bail Application before the Hon'ble High Court, baring No.297 of 2016. However, during the pendency of the aforesaid bail application, there had been various change of circumstances including the grant of bail of the co-accused. Hence, the applicant undertakes to withdraw the aforesaid bail application before the Hon'ble High Court.”

4. It is pertinent to note that the change in circumstance was not brought to the notice of Hon'ble High Court. Unless the matter was listed on board for hearing, the learned counsel appearing for the applicant had not taken any steps to circulate the matter for withdrawing the application. In fact, the matter before the ACMM was posted on 7.1.2017. After the Christmas Vacation, Courts have re-opened on 4.1.2017. In fact, on the very first day or the second day, the learned counsel for the applicant ought to have mentioned the matter and withdrawn the same before it was heard by the ACMM on 6.1.2017.

5. The learned counsel for the applicant submits that on 7.1.2017, the learned counsel representing the applicant before the learned ACMM had sought an adjournment on the ground that the present application was not yet withdrawn.

6. The learned APP had brought to the notice of this Court that the matter is posted on 7.1.2017. In the eventuality that this fact was not brought to the notice of

the Court, the ACMM, in all probabilities, would not have enquired as to whether the application is pending or has been disposed of. It is apparent on the face of the record that the applicant was prosecuting two remedies simultaneously i.e. one before the ACMM and another before this High Court i.e. in the present application. Such practice undertaken by the counsel representing applicants has been deprecated by this Court in several matters. It would be inferred that the applicant has made an attempt to mislead the ACMM only on the basis of the undertaking. The learned ACMM shall take into consideration all these aspects before deciding the application on merits.

7. The application accordingly stands dismissed as withdrawn.

8. Office to communicate this order to the learned ACMM, 47th Court, Esplanade, Mumbai, forthwith.

(SMT.SADHANA S.JADHAV,J.)