

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.505 OF 2017

Ramesh Nagnath Kadam	...Applicant.
vs.	
The State of Maharashtra	...Respondent.

Mr. Satish Maneshinde with Snehal Khannai with Anandini Fernandis and Namita Maneshinde for the Applicant.

Mr. Pravin Chavan, Special P.P. along with Mrs. P. P. Shinde, APP for the State of Maharashtra.

CORAM :A.S.GADKARI, J.

DATE : 27th March, 2017

P.C.

1) This is an application for temporary bail in CR No.336 of 2015 registered with Dahisar Police Station, Mumbai and investigated by the State CID. The applicant has preferred the present application for temporary bail for a period of one month starting from 6th March, 2017 to 7th April,2017 to enable him to attend the Budget Session of the Maharashtra Legislative Assembly.

2) The record reveals that the applicant had preferred an application for similar reliefs i.e. for permitting him to attend the winter session of the

Legislative Assembly commencing from 17.12.2015 at Nagpur which was dismissed as withdrawn by an order dated 9.12.2015 by this Court. It further reveals from the record that the applicant thereafter preferred an application for regular bail under Section 439 of the Code of Criminal Procedure bearing Bail application No.2463 of 2015 which was dismissed by a speaking order dated 27.1.2016 by this Court. The applicant thereafter moved an application No.23 of 2016 for bail which came to be disposed off as withdrawn with liberty to the applicant to approach the Court below with a fresh prayer for grant of bail on the ground that if his liability in the crime is assessed, the applicant could deposit the same. It appears from the record that the applicant thereafter moved an application below Exhibit-99 in Special Case No.104 of 2015 and Special Case No.108 of 2015 before the Trial Court for fixing his pecuniary liability in the crime. That, the Trial Court by a detailed order dated 1.2.2017 was pleased to disposed off the said application by holding that the liability of the applicant cannot be fixed at pre-trial

stage considering the nature of accusations and involvement of huge movable as well as immovable properties. The record further reveals that the applicant thereafter preferred an application below Exhibit-154 in the aforestated Special Cases thereby seeking permission to attend the budget session of the Legislative Assembly from 6.3.2017 to 7.4.2017 which has been turned down by the learned Trial Court by its order dated 17.2.2017. In the premise, the applicant has preferred the present application.

3) The learned counsel for the applicant submitted that the applicant has been elected by the people of Mohol Constituency of the Legislative Assembly and it is his duty to vent out the grievances of people from his constituency and place it before the Legislative Assembly and therefore, his presence in the assembly session is very much necessary. He further submitted that the applicant may be permitted to attend the Budget Session of the Assembly as the applicant intends to raise certain questions which are for the benefit of the electorate from his constituency. He therefore, prayed that the applicant may be granted

temporary bail.

4) The learned Special PP. opposed the application and submitted that there is no provision of disqualification under the Representation of People Act whereby, the applicant if not permitted to attend the Session of the Legislative Assembly, will incur automatic disqualification. He further submitted that the applicant cannot claim his attendance to the assembly as a matter of right. In support of his contention, he relied on the decision of the learned Single Judge of the Delhi High Court dated 5th August 2011 in *W.P.(C) 5367/2011* in the case of *Suresh Kalmadi Vs. Union of India and ors.* The learned Special P.P. submitted that this Court by a speaking order dated 27.1.2016 has rejected the application for bail of the applicant and the apprehension expressed by the prosecuting agency against the applicant at the relevant time still subsists. He further submitted that, if the applicant, even if, is released on temporary bail may tamper with the evidence and/or threaten the prosecution witnesses as most of the prosecution witnesses were employees of the Corporation

which was then headed by the applicant. He therefore, prayed that the present application may be rejected.

5) The Delhi High Court in the case Suresh Kalmadi (supra) after relying of the Judgment of the Constitution Bench of the Supreme Court in the case of *K. Ananda Nambiar vs. Chief Secretary, Government of Madras* AIR 1966 SC 657 in Para 19 and 22 has held as under:

“19. Before advertng to what was held by the Constitution Bench on the contentions aforesaid of Mr. Setalvad, I may humbly observe that the argument as raised before this Court amounts to placing Members of Parliament at a pedestal higher than their electorate. The argument assumes that the work of a Member of Parliament is more sacred and important than the work/vocation in which the citizen who have elected the said Parliamentarian may be engaged in. Such an argument is archaic and creates two classes of citizens as in a monarchy i.e. king and the Subject and is alien to our Constitution. The legal luminary of our times. Mr. Nani A. Palkhivala in his book “Our Constitution Defaced and Defiled” has explained the essence of our Constitution as under:-

“Our Constitution is primarily shaped and moulded for the common man. It takes no account of “the portly presence of the potentates, goodly in girth”. It is a Constitution not meant for the ruler but the ranker, the tramp of the road, the slave with the sack on his shoulders pricked on with the goad, the man with too weighty a burden, too weary a load.”

22. Coming back to the Constitution Bench judgment in *K. Ananda Nambiar (supra)*, it was held that the Constitution does not impose any obligation on individual Members of Parliament- they are neither bound to attend the Session nor under an obligation to be present in the House when the President addresses it; subject matter of the various Articles of the Constitution is not the individual rights of the Members of Parliament, but they refer to the right of the President to issue a summon for the ensuing Session of Parliament or to address the House. It was further held that though the basis of democratic form of Government is that Members of Legislatures must be given absolute freedom of expression when matters brought before the Legislature are debated but that is only when they attend the Session of the House. The argument that it is the

Constitutional and fundamental right of a Parliamentarian to attend the Session of the House was negatived. It was held that if the order of detention validly prevents a Parliamentarian from attending a Session of Parliament, no occasion arises for exercise of the right of freedom of speech and no complaint can be made that the said right has been invalidly invaded. Similarly, the argument that so long as the Member of Parliament has not incurred any disqualification, he is entitled to exercise his rights as such Members was also negatived and it was held that a person who is detained, himself forgoes his right to participate in the business of the Legislature. It was yet further held that so far as a valid order of detention is concerned, a Member of Parliament can claim no special status higher than that of an ordinary citizen and is as such liable to be arrested and detained under it as any other citizen.”

- 6) I am in agreement with the view expressed by the learned Single Judge of the Delhi High Court expressed in the case of Suresh Kalmadi(supra).It is to be noted here that merely because the applicant is a member of the

legislative assembly, does not entitle him to claim exception from lawful detention. The applicant is detained in Judicial custody by following the due process of law. It was not the mandate of the electorate that the applicant should take up Chairmanship of the Sahitya Ratna Annabhau Sathe Development Corporation. It is the specific case of the prosecution that the applicant while holding the post of Chairman of the said Corporation has defalcated huge funds to the tune of Rs.312/- Crores of the said Corporation. The present application preferred by the applicant may only be construed as an attempt to come out of the Jail for a temporary period and have a fresh air outside the prison wall. As stated earlier the ratio laid down by the Supreme Court in the case of K. Ananda Nambiar (supra) is self eloquent.

7) Thus, in considered view of this Court, the applicant is not entitled for the relief claimed for. The application being devoid of any merits is accordingly rejected.

(A.S.GADKARI, J.)