

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.558 OF 2017

Sandeep Khandu Pawar .. Applicant
Versus
State of Maharashtra .. Respondent

Mr. Kamlesh Gujar for applicant
Mr. Arfan Sait, APP for State.

CORAM : P.D.NAIK, J.

DATE : 28th July 2017.

P.C.

1] This is an application for bail in connection with C.R.No.348 of 2013 registered with Pant Nagar Police Station, Ghatkopar, Mumbai for offences under sections 399, 402 of Indian Penal Code and also under sections 3 and 25 of the Arms Act. The applicant was arrested after the registration of F.I.R. in the year 2013. The investigation is complete and the charge sheet is filed. The proceedings are pending in the court of sessions vide Sessions Case Nos. 248/2016 @ 249 of 2016.

2] The applicant was directed to be released on bail on 22nd July

2014 by this Court. Initially the provisions of MCOCA were invoked against the applicant. Subsequently, the applicant was discharged from the provisions of MCOC Act.

3] Initially bailable warrant was issued against the applicant by the trial court on 28th March 2016. Since the applicant was not attending proceedings thereafter, non bailable warrant was issued. The applicant preferred an application for cancellation of NBW issued by the trial court on 17th October 2016 which was rejected and the application was taken in custody. The applicant, then, preferred an application for bail on 17th October 2016 which was rejected on 19th October 2016. Subsequently, one more application was preferred by the applicant which was also rejected on 21st January 2017. It appears that the applicant had also forwarded an application for bail through jail vide Exh.132 before the trial court. Learned Advocate for the applicant makes a statement that the said application preferred vide Exh.132 has been withdrawn on 27th July 2017.

4] It is submitted by the learned Advocate for the applicant that

the applicant had met with an accident in June 2015. It is further submitted that the applicant was arrested in another case and he was in custody in respect of other case from June 2016 till September 2016. Thereafter, father of the applicant had expired in September 2016. After learning about the issuance of NBW against the applicant, the application for cancellation of the NBW was preferred by the applicant before the trial court. The said application was rejected and the applicant was taken into custody as stated hereinabove.

5] It is submitted that there was no intention to avoid trial court proceedings which is evident from the fact that the applicant preferred an application for cancellation of NBW. It is submitted that on account of reasons explained hereinabove, the applicant was not present before the trial court. It is, therefore, submitted that the applicant may be released on bail.

6] Learned APP opposed the application. It is submitted that the applicant had misused the liberty of bail granted by this Court. It is submitted that on account of the absence of the applicant initially, a

bailable warrant was issued and thereafter NBW was required to be issued. Even a notice was issued to the surety who was not traceable. In these circumstances, the trial court had rejected the application of the applicant and the applicant was taken into custody. It is submitted that there is no guarantee that the applicant would be available to face the trial in case he is granted bail. Moreover, the learned APP submits that there are several cases registered against the applicant and he is resident of Nashik.

7] Perused the documents on record. It is apparent that the NBW was issued against the applicant on 12th May 2016. The applicant was granted bail initially on 22nd July 2014 and there was nothing to indicate that till the absence of the applicant was noticed by the trial court, the applicant had misused the bail facility for a period of almost two years. Admittedly, it is not disputed that the applicant was in custody since June till September 2016. The applicant had preferred an application for cancellation of bail which shows that he had no intention to abscond and avoid proceedings before the trial court. In these circumstances, the applicant can be released on bail on certain conditions.

ORDER

- (I) Bail Application No.558 of 2017 is allowed;
- (II) Applicant is directed to be released on bail in connection with Sessions Case No.248 of 2016 @ 249 of 2016 pending before the Court of Sessions at Mumbai on furnishing P.R.bond in the sum of Rs.20,000/- with one or more local solvent sureties in the lika amount;
- (III) The applicant shall attend trial court proceedings on each and every date of hearing;
- (IV) The applicant is directed to report to Pant Nagar Police Station once in a month on first Saturday between 11 a.m. to 1.00 p.m.
- (V) In the event of two defaults in appearing before the trial court the provisions of section 439(2) will be attracted;
- (VI) Application is disposed of.

(P.D.NAIK, J.)