

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 644 OF 2017

Sayyed Masood

... Applicant

Vs.

State of Maharashtra
Through Nagpada Police Station

... Respondent

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Mr.Abad Ponda a/w. Mr.Swapnil Ambure, Mr.Raghvendra Mehrotra i/b.
Dinesh Tiwari & Associates for the Applicant.
Mrs. Prajakta Shinde, APP for the Respondent-State.
Mr.K.D.Kadam, API, Nagpada Police Station.
Mr.Sudhakar Kamble, PI, Dongri Police Station.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED : JULY 26, 2017**

P.C. :

1. This application is made under Section 436A of Criminal Procedure Code.
2. This application is moved for bail as the applicant-accused is prosecuted for the offences punishable under Sections 406, 420 and 120B of the Indian Penal Code, 1860 read with Sections 4,5 and 6 of the Prize Chits and Money Circulation Schemes (Banning), Act 1978 wherein maximum punishment is seven years. The applicant-accused was arrested on 28.08.2010. Thereafter, he was released on bail on 24.12.2011. Then first bail was cancelled on 17.07.2013 on account of the conditions imposed by this Court while granting bail. He was re-arrested on 18.12.2013 and since then he is in the custody.

3. The learned counsel for the applicant-accused has submitted that over all the applicant-accused has spent nearly 59 months in custody, if the days are counted from the first date of his arrest. He has argued that the applicant-accused is prosecuted for the offences punishable for cheating and the Prize Chits and Money Circulation Schemes (Banning), Act, wherein the maximum punishment for these offences is seven years imprisonment. He has further submitted that under Section 436A of Cr.P.C., it is mandatory for the Court to grant bail if at all the accused is in custody for one-half of the maximum period of imprisonment provided for the said offence under that law. In the present case, the first period of custody and the subsequent period after second arrest is more than one-half of the maximum period of imprisonment. The applicant-accused ought to have been released on bail on 23.02.2016. Moreover, it is obligatory on the part of the concerned Magistrate to record reasons in writing if the detention is continued for more than one half of the maximum period of imprisonment. In this case, neither the reasons were recorded in writing for extension of more than one half period of imprisonment, nor the applicant-accused was released on bail. He has further submitted that in the Sessions Case till today the charge is not framed against the applicant-accused. In support of his submission, he relied on the judgment in the case of **Bhim Singh Versus Union of India & Ors.**, reported in **(2015) 13 SCC 605**, so also relied on the judgment passed by the learned Single Judge of this Court in the case of **Hasan Ali Khan Versus The State of Maharashtra & Anr. in Criminal Bail Application No. 2335 of 2014 dated 12.08.2015.**

4. The learned APP for the respondent-State while opposing this bail application, has pointed out that though the applicant was bailed out on 24.12.2011, his bail was cancelled and he was taken in custody for non-attendance at the police station as directed by this Court. She has submitted that the order of cancellation of bail was thereby confirmed by the Supreme Court and since then the applicant-accused is in prison. She has further submitted that the applicant-accused has committed number of offences and an amount of Rs. 19 Crores is involved in the offences. She has further submitted that the trial is going to start in near future.

5. It is mandatory for the Court to strictly follow the procedure under Section 436A of Cr.P.C. In the present case, the applicant-accused has undergone total 59 months in custody. After second arrest, he stayed in the custody for more than 3 ½ years i.e. a period completing one half of the maximum period of imprisonment specified for the offences under which he is prosecuted. The maximum punishment for these offences is seven years and thus, his case directly falls under Section 436A of Cr.P.C.

6. If the Magistrate wants to continue the detention of the person for a period longer than one half of the said period, then it is obligatory on the Magistrate to record reasons for the same in writing. On query, the learned counsel for the applicant-accused has made statement that no such reasons were recorded by the learned Magistrate for extending the applicant's custody after 22.02.2016 i.e. even after one half of the maximum period of imprisonment was completed. In the case of **Bhim Singh** (supra), the Supreme Court has dealt with the Section 436A of

Cr.P.C. While considering the fast tracking criminal justice in the country, it held as follows:

“5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A”.

The case of the applicant-accused is covered under the case of ***Bhim Singh*** (supra).

7. Considering the facts and circumstances of the case, I allow this application on the following terms:

ORDER

- a) The applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with one or two solvent sureties in the like amount.
- b) The applicant-accused shall surrender his passport, if not surrendered earlier. The Investigating Officer to inform the Passport Authority accordingly. The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent and temporary address to the Investigating Officer alongwith documentary proof of his address.
- c) The applicant-accused shall attend the concerned police station as and when called.

d) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

8. Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)