

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.644 OF 2016

Bradley Jovito Fernndes ...Applicant.

vs.

The State of Maharashtra ...Respondent.

Mr. A.H.H.Ponda i/by Ashish Raghuvanshi for the Applicant.

Ms. Ashwini Takalkar, APP. for the State.

Mr. Amit Date with Ms. Anjali Thakoor for the original complainant.

CORAM : A.S. GADKARI, J.

DATE : 16th March,2017

PC:

1) The applicant is seeking bail under Section 439 of the Cr.P.C. in CR No.301 of 2014 registered with Bangur Nagar Police Station,Mumbai under Section 307 of the I.P.C. and under Sections 37 read with 135 of the Mumbai Police Act.

2) The facts giving rise for the lodgment of the said crime are briefly mentioned in the order dated 17.12.2015 passed by this Court. The first information report was lodged on 26.11.2014 by the informant Smt. Livia Livo Mathaias. The applicant came to be arrested on 26.11.2014. The applicant preferred Bail Application

No.469 of 2014 under Section 439 of the Cr.P.C. before the Trial Court which was allowed by an order dated 1.1.2015. Feeling aggrieved by the grant of bail to the applicant, the first informant Smt. Livia Mathias preferred Criminal Application No. 27 of 2015 in this Court seeking cancellation of bail under Section 439(2) of the Cr.P.C. This Court by its order dated 17.12.2015 allowed the said application by holding that the order dated 1.1.2015 passed by the Trial Court, granting bail was perverse as it did not take into consideration the vital aspects of the matter. This Court had granted two weeks time from 5.1.2016 to the applicant to surrender before the police.

3) The applicant questioned the correctness of the said order dated 17.12.2015 before the Hon'ble Supreme Court by preferring Special Leave to Appeal (Cri.) No.478 of 2016. The Hon'ble Supreme Court by its order dated 19.1.2016 dismissed the said appeal and granted two weeks time to the applicant to surrender . In furtherance of the directions issued by the Hon'ble Supreme Court, the appellant surrendered before the Investigating Agency on

2.2.2016 and since then he is in jail.

4) The record reveals that the applicant thereafter preferred an application below Exh.5 in Sessions Case NO.162 of 2015 arising out of CR No.301 of 2014 registered with Bangur Nagar Police Station, Mumbai before the trial Court. The trial Court by its order dated 15.3.2016 rejected the said application on the ground that, this Court has earlier cancelled the bail granted to the applicant by its order dated 17.12.2015 and the same has been upheld by the Supreme Court. The Trial Court has also observed that this Court merely has not brushed aside the order passed by the Sessions Court granting bail as perverse but has also considered all the material and has explained as to how the accused was not entitled for bail.

5) The learned counsel appearing for the applicant submitted that the order passed by the trial Court on 15.3.2016 is an erroneous order and the learned trial Court ought to have appreciated the facts and circumstances including the evidence on record in its proper perspective. He further submitted that the earlier

order dated 17.12.2015 was passed by this Court on an application preferred by the original complainant for cancellation of bail of the applicant inter alia challenging the order of the trial Court dated 1.1.2015 on merits and for breach of any condition. He submitted that as the applicant is in jail for last more than 13 months, instead of relegating the matter back to the trial Court, this Court may consider the present application on its own merits.

Mr. Date, the learned counsel appearing for the original complainant vehemently opposed the application and submitted that the facts mentioned in the first information report are corroborated by the other witnesses and it exhibits ghastly attack on the victim by the applicant with a dangerous weapon. He submitted that the injuries suffered by the victim are on vital part of the body. He submitted that if the applicant is released on bail there is every possibility that he may again indulge into similar act and may cause harm to the complainant with a view to take revenge. He further submitted that the applicant may tamper with the evidence and/or pressurize the witnesses.

He therefore, prayed that the present application may be rejected.

6) I have perused the entire record annexed to the application. As stated earlier the facts giving rise to the lodgment of the present crime i.e. CR No.301/2014 and the material/evidence against the applicant has been briefly mentioned in the earlier order dated 17.12.2015 and for the sake of brevity the same need not be repeated here.

The record reveals that after lodgment of the first information report, the applicant was arrested on 26.11.2014 and was released on bail in pursuance of the order dated 1.1.2015 passed by the trial Court. That, in pursuance of the directions issued by the Apex Court the applicant surrendered before the Investigating Agency on 2.2.2016 and since then till today he is in jail. After cancellation of his bail by this Court, the, the applicant is in jail for approximately 13 months. It appears from the record that the applicant was on bail from 1.11.2015 to 2.2.2016. There are no serious allegations against the

applicant about the breach of any condition imposed upon him by the trial Court by its order dated 1.1.2015 In the present crime, charge sheet is submitted on 11.4.2015. It is informed by the learned counsel for the applicant that till date the charge is not framed in the said Sessions Case No.162/2015.

7) After taking into consideration the afore-stated peculiar facts and circumstances and over all view of the matter, I am inclined to release the applicant on bail. The apprehension expressed by the learned counsel for the original complainant can be taken care of by imposing stringent conditions upon the applicant while releasing him on bail.

8) Hence, the following order.

a) The applicant be released on bail in CR No.301 of 2014 registered with Bangur Nagar Police Station, Mumbai culminated into Sessions Case No.162 of 2015 on his furnishing PR bond of Rs.25,000/- with one or two solventlocal sureties in the like amount.

b) After his release from jail the applicant shall not

enter the jurisdiction of Mumbai Police Commissioneriate except for attending the court dates of Sessions Case No.162 of 2015.

c) Before his release from jail the applicant shall provide his residential address, where he intends to reside after his release from Jail to the trial Court and also to the Bangur Nagar Police Station.

d) The applicant shall attend the local police station where he intends to reside after his release from Jail once in a month, on every Sunday of the said month between 11.00 a.m. to 3.00 p.m. and shall mark his presence there.

e) The applicant shall not tamper with the evidence and/or threaten any of the witnesses in Sessions Case NO.162 of 2015.

f) The applicant shall also attend all the dates before the trial Court.

g) Any two consecutive defaults in complying with the conditions will attract the provisions of cancellation for bail.

- h) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)