

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 794 OF 2016

Clarence Anthony Pereira

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Shailendra Kumar Singh Advocate for Applicant.

Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 8th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein has been re-arrested on 15/12/2015 by virtue of non-bailable warrant issued by the Sessions Court as it was found that applicant was not co-operating with all the stages of trial.

2) It is a matter of record that applicant herein was arrested in crime no. 306 of 2014 and crime no. 350 of 2014 for offence punishable under sections 376, 509, 504 & 506 of the Indian Penal Code by order dated 22/12/2014. Applicant herein had not attended the stipulated dates before the Sessions Court since 16/06/2015 and hence, Sessions Court was constrained to issue

ism

non-bailable warrant. Applicant had yet not appeared and therefore on 06/07/2015, notice was issued to the surety. On 21/07/2015, applicant herein was represented by Advocate who had submitted before the Sessions Court that applicant is bed ridden. Despite several efforts made by the investigating agency, applicant was not found. Notices were issued to the surety on 04/12/2015 and 12/12/2015. Sureties had appeared before the Court and had made a statement before the Court that whereabouts of the applicant are not known to them. On the same day, applicant had appeared before the Court. Applicant had filed an application seeking recalling of the non-bailable warrant. The said application was rejected since the applicant was not co-operating with the Court. He was taken into custody and remanded to judicial custody. Matter was adjourned to 29/12/2015 for framing of charge.

3) The learned counsel for the applicant submits that on 21/12/2015, applicant had filed an application seeking enlargement on bail after he was re-arrested by issuance of non-bailable warrant. Taking into consideration the conduct of the accused, application was rejected. The learned Sessions Judge has relied upon the report filed by the investigating agency that whereabouts of the applicant were not traceable. Applicant had submitted before the

Sessions Court that applicant was admitted in Raheja Hospital and therefore, could not attend stipulated dates. Hence, it is clear from the records that applicant is in custody since 15/12/2015.

4) The learned counsel for the applicant has vehemently submitted that applicant was enlarged on bail under section 439 of the Code of Criminal Procedure, 1973 by the Sessions Court after considering the merits of the matter vide order dated 22/12/2014. Orders are taken on record and marked as article 'X' collectively. The learned Sessions Judge in crime no. 360 of 2014, at the time of granting bail, had observed that the victim was working as domestic maid with the present applicant. She was major. That the F.I.R. was lodged practically after 28 months of the incident only when the complainant had learnt that accused/applicant has been arrested in another crime on the basis of similar report lodged by Vidya Fernandes. There was an allegation that she was discontinued from her job and the remainder salary was not paid.

5) In Crime no. 350 of 2014 also, the learned Sessions Court had observed that the victim and accused were acquainted with each other. The victim is about 36 years old. She was working as domestic maid with the applicant. It was also observed by the learned Sessions Judge that the F.I.R. was lodged

after an inordinate delay of 10 months, when the first informant had learnt that the applicant is in custody in crime no. 403 of 2014 since 11/08/2014, on the basis of F.I.R. lodged by one Rifat Sadiq @ Shamina for offence punishable under section 354 (A), 420, 506 of the Indian Penal Code and section 66 (b) of the Information and Technology Act.

6) The learned counsel for the applicant vehemently submitted that the applicant was granted bail on considering merits of the matter and taken in custody for almost 14 months only by virtue of non-bailable warrant. The learned counsel for the applicant has filed an undertaking on record which is signed by the applicant before the Jailor of the Mumbai Central Prison that he would attend all the stipulated dates before Sessions Court. It is also stated that the applicant would reside at Vishwajeet Meadows, 505, Redrose, 5th floor, Shirgaon, Ambernath (East) till the conclusion of trial.

7) In view of the said undertaking, applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail in crime nos. 360 of 2014 and 350 of 2014, on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall attend the concerned police station on first and third Sunday of each month, till the framing of the charge and also attend all the stipulated dates before the Sessions Court.
- (iv) Upon failure to attend any two consecutive dates, prosecution would be at liberty to file an application under section 439 (2) of Code of Criminal Procedure, 1973. Similarly, the learned Sessions Court seized with Sessions Case No. 339 of 2015 and 155 of 2015, shall issue non-bailable warrant against the applicant and take him into custody.
- (v) Application is allowed in the above terms and disposed of.

(SMT. SADHANA S. JADHAV, J.)