

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.954 OF 2017

Maji Kesa Bappa @ Ramesh Patel ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr.P.G. Pandey for the Applicant
Mr.Yogesh Dabke, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **AUGUST 23, 2017**

P.C.:

1. This is a second bail application by the applicant-accused. The first bail application No.1451 of 2015 was rejected on 16.4.2016.
2. The learned Counsel for the applicant-accused submitted that today 10 witnesses are examined by the learned Sessions Judge. Out of 10 witnesses, 4 have turned hostile and the remaining witnesses did not state anything incriminating against the applicant-accused. Secondly, this Court had directed that the trial Court shall complete the trial on or before 31.12.2016 and therefore, this second bail application is preferred.

3. The learned Counsel for the applicant relied on the ratio of the judgments in **Mithun vs. State of Madhya Pradesh**¹; **Jaya Simha vs. State of Karnataka**²; **Jai Singh vs. State of Rajasthan**³; **Tirath Singh vs. State**⁴ and **Sube Tunde Kachi vs. State**. In all these judgements, he submitted that the learned Judges of the various High Courts have granted second bail application.

4. Learned Prosecutor has opposed the bail application.

5. In the case of **Mithun vs. State of Madhya Pradesh** (supra), the accused was tried initially u/s under section 307 of the Indian Penal Code and thereafter section 302 of the Indian Penal Code. In the said case, 7 witnesses were examined and thereafter, the witnesses remained absent and therefore, the second bail application was allowed. In the present case, all the 10 witnesses are examined and only the investigating officer is to be examined.

6. In the case of **Jaya Simha vs. State of Karnataka** (supra), the accused was facing charges that he facilitated the prisoner to use mobile phones for his unlawful activities and he was prosecuted under sections 255, 260, 265, 465, 468, 471 to 475, 420 r/w 120B of the Indian Penal Code. Under none of these sections, capital punishment can be awarded.

1 MPLJ 1987 380

2 AIR SCW 2007 7056

3 CRLJ 1992-0-2873

4 CRLJ-2010-0-1336

In the said case, 256 witnesses were examined, however, the principal culprits were other persons. The appellant was in jail for about 3 years and 9 months. The present appellant in the case in hand is in jail since 3 years. In the case of **Jaya Simha vs. State of Karnataka** (supra), the Court had released one accused in the same case with the same nature of involvement. Thus, the facts of the case are different.

7. In the case of **Jai Singh vs. State of Rajasthan** (supra), the accused was facing charges u/s 498A and section 304B of the Indian Penal Code and in the said case, the accused was in jail since 1 year and not a single witness was examined. In the said case, the High Court had given direction to complete the trial within 2 or 3 months, however, it was not completed and so, the learned Single Judge of the Rajasthan High Court considered that the order was disobeyed. I am of the view that the directions given to the trial Court to complete the trial are to be always considered as directory and there are other compelling circumstances before the learned Sessions Judge which may come in following the directions of the Court of expediting the Sessions case. Some times, many Sessions cases are time bound. Hence, it is not applicable.

8. In the case of **Tirath Singh vs. State** (supra), the accused was facing trial for murder. The eye witness stated that he saw the accused taking away the deceased. However, two witnesses turned hostile. The

judgment of the Jammu & Kashmir High Court has considered the facts of that case and granted second bail application.

9. In the case of **Sube Tunde Kachi vs. State** (supra), the accused was facing trial u/s 302 of the Indian Penal Code. Nothing is mentioned about the number of witnesses examined.

10. Thus, the case laws cited by the learned Counsel for the applicant-accused are not applicable to the present case in hand. Considering the facts and circumstances of the present case, I am of the view that I need not marshal evidence at this stage. When 10 witnesses are examined and only the investigating office has remained, I am not inclined to entertain this second bail application.

11. Bail application is accordingly rejected. The learned trial Judge to proceed with the matter preferably following the procedure u/s 309 of the Code of Criminal Procedure and the Prosecutor shall produce the witnesses as per the timetable given by the learned Sessions Judge. The learned Sessions Judge to complete the trial on or before 13.10.2017. The prosecution and the investigating officer are directed to cooperate with the learned Sessions Judge in completion of the trial in time.

(MRIDULA BHATKAR, J.)