

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

**BAIL APPLICATION NO.1010 OF 2017**

Syed Abid Husain @ Ali Bhai ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Aniket Vagal for the Applicant.

Mr. S.V. Gavand, APP for the Respondent -State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 10<sup>th</sup> OCTOBER, 2017.**

**P.C.:-**

This is the second bail application filed by this Applicant, who is facing trial in MCOC Case No.1 of 2006. Said MCOC case arises from Crime No.267 of 2005 registered with Pimpri Police Station for offences punishable under Sections 201, 302, 364(A), 387, 403 and 511 r/w. 120 B of the IPC and Section 4(25) of the Arms Act, 1967 and Section 1(i) (ii), 3(2) and 3(4) of the MCOC Act, 1999.

2. The case of the prosecution in brief is that the Applicant and other co-accused had entered into a criminal conspiracy to abduct Sagar Sahani, the son of Satinder Sahani. Accordingly the Applicant abducted said Sagar Sahani and the other co-accused demanded

ransom amount of Rs.2 crores for his release. It is alleged that the Applicant and the other co-accused had subsequently committed murder of said Sagar. The aforesaid crime came to be registered pursuant to the FIR lodged by Satinder Sahani, the father of the deceased Sagar. The Applicant was arrested on 29<sup>th</sup> June, 2007. The crime was investigated and chargesheet was filed and the case being sessions triable was committed to Special Court, Pune. The Applicant had preferred Bail Application No.772 of 2015 before this Court, which came to be dismissed by order dated 5<sup>th</sup> February, 2016. The reasons for dismissing the said application are recorded in paragraph 6 of the said order.

3. The Applicant has now filed the present application mainly on the ground of delay in conducting the trial.

4. Mr. Aniket Vagal, the learned counsel for the Applicant has submitted that though the Applicant was in custody since 2007, he was not produced before the Court till 22<sup>nd</sup> February, 2017, on which date charges came to be framed. He further submits that the delay in conducting the trial entitles the Applicant for bail.

5. Mr. S.V. Gavand, the learned APP submits that the Applicant was transferred to Hyderabad wherein he was facing trial in 10 other cases. Since the Applicant was transferred to Hyderabad, the trial against the Applicant was separated and the prosecution had proceeded with the trial of the other accused and they have been convicted. He further submits that the co-accused has preferred an Appeal No.244 of 2013 against their convictions and that the record and proceedings were called before this Court. In the absence of the record and proceedings, the trial against the Applicant could not be proceeded. He further submits that the records are now sent back to the Court of Sessions and charge has already been framed and that the trial has already commenced.

6. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State.

7. As stated earlier, the bail application filed by the Applicant was earlier rejected on merits. The findings recorded in paragraph 6 of the order dated 5<sup>th</sup> February, 2016 reveals that the First Informant had received a call on his cell phone demanding ransom of Rs.2 crores

to release his son and that the records reveal that the said call was made from the cell phone of the deceased. The conversation between the caller and the First Informant was recorded. After the arrest of the Applicant, his voice sample was taken and the said voice sample and the recorded conversation were sent to Central Forensic Science Laboratory (CFSL), Chandigarh. The report of CFSL, Chandigarh prima facie reveals that voice sample of the Applicant tallies with the recorded conversation. Under the circumstances, it was held that the material on record prima facie proves the involvement of the Applicant in committing the crime, which is not only grave but is of heinous nature. The previous application for bail was accordingly dismissed.

8. Since the earlier application was dismissed on merits, the Applicant would not be entitled to file a fresh application on the same ground. Nevertheless a second application would be maintainable if filed on the basis of change in circumstances. The only circumstance pointed out by the learned counsel for the Applicant is non-production of the Applicant before the Court and delay in trial. It is not in dispute that the Applicant was facing prosecution in 10 other cases before several Courts at Hyderabad and since 2007 to 2015 he was in custody at Hyderabad and this necessitated separation of trial. Thus the delay

cannot be solely attributed to the prosecution. Furthermore, the charge has now been framed and trial has already commenced before the Special Court at Pune. Considering the above facts, delay per say would not be a ground to grant bail.

9. Hence, the application for bail is dismissed. However, considering the fact that the matter is of the year 2007, learned Judge of the Special Court, Pune is directed to dispose of the said MCOC Case No.1 of 2006 as expeditiously as possible and in any event within a period of nine months from the date of receipt of a copy of this order.

**(ANUJA PRABHUDESSAI, J.)**