

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

CRIMINAL APPLICATION NO. 288 OF 2017

Salim Usman Mistry .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....
Mr.Ashok Pande, Advocate for the Applicant.
Mr.Ajay Patil, APP for the Respondent – State.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 28, 2017.

P.C. :

This is an application seeking modification of order granting bail to the applicant passed by the learned Sessions Judge on 11th May, 2017 in connection with Bail Application No.589 of 2017.

2 The applicant was arrested on 6th January, 2017 in connection with C.R.No.163 of 2013, registered with EOW Housing Unit - II under Sections 420, 465, 467, 468, 471 and 120B read with Section 34 of the IPC.

3 While granting bail, the sessions Court has observed

that the apprehensions raised by the prosecution that the applicant may not be available for in future and he was arrested after various efforts from Balsad. The Session Court, thereafter, granted bail to the applicant on executing P.R. Bond of Rs.5,00,000/- with one or more solvent sureties in the like amount. Other conditions imposed while granting bail is that the applicant shall deposit the sum of Rs.25,00,000/- by way of cash security with the trial Court. The applicant, has, therefore, preferred the present application seeking modification of the conditions stipulated in order dated 11th May, 2017 imposed by the trial Court.

4 Learned advocate for the applicant submitted that the applicant has been in custody from 6th January, 2017. On completion of investigation charge-sheet has been filed. Although, the bail was granted vide order dated 11th May, 2017, he could not avail of the said facility on account of onerous conditions imposed by the Sessions Court. He further submitted that the applicant having a tumour in the chest and is ailing. It is submitted that the security amount, as imposed by the Sessions Court and the additional security of Rs.25,00,000/- are onerous conditions which the applicant is not in a position to comply with

and, therefore, the applicant has continued to remain in the custody.

5 Learned APP opposed the application. He submitted that the applicant is involved in a serious crime and considering the gravity of the offence, the condition was imposed by the Sessions Court. He further submitted that considering the fact that the applicant was not available for arrest immediately after the registration of the FIR, the Sessions Court has rightly imposed the said conditions.

6 I have perused the documents on record and the order passed by the Session Court. In paragraph 7 of the order, the Sessions Court has observed that the applicant is interrogated during the police custody and he is in judicial custody since 20th January, 2016. It was further observed that the investigation is completed and the charge-sheet is filed on 15th February, 2017 and the offences charged against the applicant are triable by the Magistrate. It is also observed that the prosecution is based on documentary evidence and, therefore, there is no least possibility of tampering of prosecution evidence. However, in paragraph no.9 of the order, the Sessions Court has

observed that the applicant was arrested after various efforts from Balsad and there is an apprehension expressed by the prosecution that he will not be available for trial. In the operative order, however it can be seen that apart from paragraph nos.2 and 3, there are various other conditions imposed upon the applicant such as he has been directed to furnish the details about his place of residence and the contact number for verification and also communicate the changes in future to the investigating agency. It was further directed that the applicant was not directly or indirectly make any inducement or threat to the prosecution witnesses and should not in any manner tamper with the prosecution evidence. The applicant shall not leave Mumbai without prior permission of the trial Court and that he shall remain present before the concerned trial Court and to remain present before the trial Court on each and every date of hearing. The Sessions Court has imposed conditions to secure the presence of the applicant. The learned advocate for the applicant had relied upon the decision of the Apex Court in the case of ***Sumit Mehta Vs. State of N.C.T. of Delhi in Criminal Appeal No.1436 of 2013***. In paragraph 15 of the said decision, it has been observed by the Apex Court that the Fixed Deposit of Rs.1,00,00,000/- for a period of six months in the name of the

complainant therein and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It is further observed that it must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not. It is only be ascertained after completion of trial.

7 In the aforesaid circumstances, condition nos.2 and 3 can be modified. It is noted that the applicant is in custody despite on bail being granted to him on 11th May, 2017.

8 Hence, I pass the following order:

:: ORDER ::

- (i) The order dated 11th May, 2017, passed by the Sessions Court in Bail Application No.589 of 2017 is modified to the extent that the applicant/accused Salim Usman Mistry be released on bail on executing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one or more sureties in the like amount;

- (ii) Condition No.3 stipulated in the said order directing the applicant to deposit the sum of Rs.25,00,000/- is deleted. The other conditions shall remain as it is;
- (iii) Criminal Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)