

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

CRIMINAL APPLICATION NO.568 OF 2017

Kedari Shamrao Shinde .. Applicant.

Vs.

The State of Maharashtra .. Respondent.

Mr.Dhananjayrao D. Rananaware for the Applicant.

Mr.Avinash D. Khamkhedkar APP for the Respondent.

CORAM : A. K. MENON, J.

DATED : 28TH JUNE, 2017

P.C. :

1. By this Criminal Application, the applicant has approached this Court seeking quashing and setting aside the order dated 27th April, 2017 passed by the Sessions Judge, Vaduj. The short issue involved is whether apart from grant of bail inability of the accused to furnish bail bond and satisfy the conditions for providing surety ordering the accused to be released on furnishing P.R. Bond of Rs.75,000/- and one or more sureties for the like amount which resulted in this being deprived of benefit of the bail order. In the present case the applicant was granted bail vide order dated 21st April, 2017. The operative part of the order reads thus :

“1. Application Ex.5 is allowed.

2. Applicant/accused Kedari Shamrao Shinde be released on

furnishing P.R. bond of Rs.75,000/- with like amount of one or more sureties.

3. Applicant shall attend the concerned police station on every Monday and Saturday in between 3.00 p.m. to 5.00 p.m. till further orders.

4. Applicant shall co-operate with investigating officer.

5. Applicant shall not leave State of Maharashtra without permission of this Court.

6. Applicant shall not tamper with the evidence of prosecution witnesses.

7. Breach of any of the condition would be a ground for cancellation of bail."

2. It appears that the applicant could not arrange for solvent surety immediately. He therefore sought time of two days to furnish sureties and for permission to furnish cash bail. On 21st April, 2017 the learned Judge rejected the application to release the applicant on cash bail. Thereafter on 29th April, 2017 the applicant preferred another application and prayed that he had procured sureties and he may be allowed to furnish sureties. That application came to be rejected on the basis that the charge-sheet had already been filed on the very day when he sought the bail order and hence, the right of being released on bail has been extinguished.

3. Heard learned counsel for the applicant as well as learned APP for the State.

4. The facts and circumstances of the present case reveal that the charge-sheet was filed after the order granting bail was passed on 21st April, 2016 since the charge-sheet had not been filed and the Sessions Judge had called for a report from the Superintendent, District and Sessions Court, Vaduj. The report submitted indicated that till 21st April, 2017 the charge-sheet had not been filed and, accordingly, the order of bail was passed. However, since the cash bail was refused the prosecution filed their reply on subsequent application seeking permission to furnish sureties on the basis that the right of the applicant had been extinguished since the charge-sheet had been filed on 21st April, 2017 itself.

5. Having considered the factual aspects and in particular the fact that the bail has already been availed of and granted, what remains is the furnishing sureties. Mr.Rananaware, learned counsel appearing on behalf of the applicant also relied upon the decision of the Supreme Court in the case of *Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453* and the decision of Madras High Court in *Periyaswamy vs. State by the Inspector of Police, 2010 Cri.L.J. 3815* . The question that arises for the consideration is whether indefeasible right of the accused which had accrued in favour of the accused was extinguished in the facts of this case by virtue of the omission in

furnishing surety immediately on the order of bail being granted and before the charge-sheet being filed. It is not in dispute that the accused was granted bail and an application was made seeking extension of time to furnish surety bond. Pending this application, the charge-sheet came to be filed. That by itself in my view would not defeat the right that has accrued by granting the order of bail in the peculiar facts and circumstances of the case. The bail has been granted and consequences must follow unless the bail is cancelled. Hence, I am of the view that the accused is entitled to relief. I accordingly pass the following order :

- (i) The impugned order dated 27th April, 2017 passed by the Sessions Judge is set aside.
- (ii) The applicant shall be released on bail as per the order dated 21st April, 2017 subject to compliance with the conditions. The conditions to be complied on or before 5th July, 2017.
- (iii) No order as to the costs.

(A.K. MENON, J.)