

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

BAIL APPLICATION NO. 1323 OF 2017

Deveshkumar R. Tiwari @ Rinky	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

.....
Mr.S.S. Khan, Advocate for the Applicant.
Mr.R.M. Peth, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 25, 2017.

P.C. :

This is an application for bail in connection with C.R. No.55 of 2008 registered with DCB CID Unit VIII. On completing investigation, the charge-sheet was filed and the proceedings are pending in the Court of Additional Chief Metropolitan Magistrate, 37th Court at Esplanade vide C.C. No.68/PW/2009. The offence was registered under Sections 399 and 402 read with 34 of IPC and Sections 3 and 25 of the Arms Act read with Section 37(1)(a) and 135 of the Mumbai Police Act.

2 The applicant was released on bail by the Court of Sessions by order dated 7th May, 2008. While granting bail, the

applicant was directed to report to the office Unit-VIII once in a week on Saturday between 5:00 p.m. to 7:00 p.m. for two months and thereafter as and when required by the investigating officer. The charge-sheet was filed on 21st January, 2009. From the Roznama it appears that the applicant was not present on the date of filing of charge-sheet. It also appears from the Roznama that summon was issued on 21st January, 2009 on the date of filing of charge-sheet. It appears that non bailable warrant was issued on 12th March, 2009. The applicant was, thereafter, arrested on 27th March, 2017 at his native place in the Uttar Pradesh.

3 The applicant preferred bail application before the Sessions Court which has been rejected on 13th April, 2017. Learned advocate for the applicant submitted that although the charge-sheet was filed on 21st January, 2017, no intimation about filing of charge-sheet was given to the applicant. Hence, the applicant was not present before the Court on the date when the charge-sheet has been filed. It is further submitted that the summons was also not served upon applicant. It is submitted that the applicant had furnished residential address of Mumbai as well as his native place to the investigating authority. Since the

intimation about filing of charge-sheet was not issued to the applicant, he did not attend the trial Court. It is submitted that the applicant was at his native place at Uttar Pradesh at the address which is mentioned in the cause title of the application. The applicant has also annexed the documents in support of his submissions that he was at his native place at Uttar Pradesh. Learned advocate for the applicant relied upon the decision of the Supreme Court in the case of ***Free Legal Aid Committee Vs. the State of Bihar***¹. In the said decision, it was observed that after the accused is released on bail, he need not appear before the Court until the charge-sheet is filed and process is issued by the Court. It is further submitted that the applicant would reside in Mumbai and he would attend the trial Court proceedings regularly.

4 Learned APP opposed the application for bail. It is submitted that three persons are absconding. Nonailable warrant was issued against the applicant in 2009 and for a long period of time the applicant was absconding. It is submitted that in the event of grant of bail to the applicant, there is no guarantee that the applicant would be available for trial

1 AIR 1982 SC 1463

considering the antecedents against the applicant. It is submitted that the applicant is not permanent place of resident of Mumbai.

5 I have perused the documents which are annexed to the application. The Roznama indicates that the charge-sheet was filed on 21st January, 2009. The Court took cognizance of the charge-sheet. The applicant (accused no.1) was not present. There is nothing on record to indicate that the applicant was served upon the intimation about filing of the charge-sheet. There is also nothing to indicate that the summons was served upon the applicant. Perused the Roznama which has been annexed to the application. The trial has not yet proceeded. The applicant and accused no.5 are in custody. The offences were registered under Sections 399 and 402 read with 34 of the IPC. The applicant has furnished the documents to indicate that was residing in Uttar Pradesh where he was arrested and brought to Mumbai. The Roznama also does not indicate that attempts were made to serve the summons upon the applicant. In the circumstances, bail can be granted to the applicant on certain conditions.

6 Hence, I pass the following Order:

:: ORDER ::

- (i) Bail Application No.1323 of 2017 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.55 of 2008 registered with DCB CID Unit VIII, on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more local sureties in the like amount;
- (iii) The applicant shall attend DCB CID Unit VIII once in a month on first Saturday between 11:00 a.m. to 1:00 p.m.;
- (iv) The applicant shall attend the trial Court on every date of hearing;
- (v) The applicant shall furnish the details about his residential address to the investigating officer;
- (vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)