

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

CRIMINAL APPLICATION NO.948 OF 2017

Uday Suresh Surve

.... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Shriram Shirsat, a/w. K. Padmashri, i/by Kulkarni & Associates
for the Applicant.

Ms. A.A. Takalkar, APP for the Respondent - State.

CORAM : A.S.GADKARI, J.

DATE : 13th DECEMBER 2017

P.C.:

. The applicant has impugned an Order dated 14.08.2017 passed in Misc. Application No.1466 of 2017 in Bail Application No.311 of 2017 by the Addl. Sessions Judge, City & Sessions Court, Gr. Mumbai, thereby rejecting the application seeking modification of clause No.2(a) of the Order dated 04.05.2017 passed in M.A.No.738/2017.

2. The record indicates that, by an Order dated 24.03.2017 passed by the learned Addl. Sessions Judge, City Sessions Court, Gr. Mumbai, in Bail

Application No.311 of 2017, the applicant was directed to be released on bail on various conditions. Condition No.2 of the said order which is relevant for decision of the present application reads as under:-

“The applicant/accused – Uday Suresh Surve, be released on bail in C.R.No.66/2016 registered at BOW, Housing Unit-II on furnishing the P.R.Bond of Rs.10,00,000/- (Rs.Ten Lakh Only) with one or two solvent sureties in the like amount, in addition to that, to furnish bank guarantee of Rs.50,00,000/- (Rs.Fifty Lakh Only).

3. As the applicant was unable to furnish bank guarantee to the tune of Rs.50 Lakh, he moved an application bearing Misc. Application No.738 of 2017 for modification of the said condition. The Trial Court by its Order dated 04.05.2017 was pleased to modify the said order in the following terms:-

“2. The conditions regarding the bail as per order dated 24.03.2017 in Bail Application no.311/17 is modified as under:-

(a) The applicant Uday Suresh Surve, be released on bail in C.R.No.66/2016, registered at BOW, Housing Unit-II on furnishing provisional cash bond of Rs.10,00,000/- in lieu of P.R. Bond of Rs.10,00,000/- one or two solvent sureties in the like amount, in addition to that, to furnish bank guarantee of Rs.40,00,000/- instead of furnishing Bank Guarantee of Rs.50,00,0000/-.

3. The applicant is directed to furnish the solvent sureties as directed by this Court within 8 weeks from the date of his release on the provisional cash bail and the cash security. If he failed to do so, then this order will be automatically stands cancelled.”

4. By a further Order dated 16.06.2017 passed in M.A.No.1052/2017,

the words appearing in clause No.3 of Order dated 04.05.2017 i.e. “*and the cash security*” stood deleted from the said Order dated 04.05.2017. However, the same words appearing in clause No.2(a) of the said Order dated 04.05.2017 were retained. The applicant, therefore, filed further application bearing Misc.Application No.1466/2017 seeking clarification of the said Order dated 16.06.2017. By the impugned Order dated 14.08.2017, the Learned Judge of the Trial Court was pleased to reject the said application.

5. As noted earlier, while modifying the Order dated 04.05.2017 by an Order dated 16.06.2017, the Trial Court was pleased to delete the words “*and the cash security*” from line No.3 of clause No.3 appearing in the operative part of the Order dated 04.05.2017 in Misc. Application No.738 of 2017. In my view, once the words “*and the cash security*” appearing in clause No.3 of Order dated 04.05.2017 stood deleted by an Order dated 16.06.2017, the words “*to furnish cash security*” appearing in clause No.2(a) of Order dated 04.05.2017 needs to be deleted, otherwise it would amount to conflict in the two conditions and will further make the clause No.2(a) of Order dated 04.05.2017 superfluous and therefore the said words “*to furnish cash security*” from Clause No.2(a) in Order dated 04.05.2017

stands deleted therefrom.

6. It is submitted by the learned Counsel for the applicant that, though the applicant was directed to be released on bail by an Order dated 24.03.2017 due to the said harsh and onerous conditions, the applicant is still languishing in jail. In view thereof, the sentence in Clause No.2(a) in the operative part of Order dated 04.05.2017 passed in Misc.Application No.738/2017 i.e. *“In addition to that to furnish cash security of Rs.40,00,000/- instead of furnishing bank guarantee of Rs.50,00,000/-”* stands deleted from the said order.

7. Rest of the conditions imposed by the Trial Court by its Orders dated 24.03.2017 and 04.05.2017 passed in Bail Application No.311 of 2017 and Misc. Application No.738 of 2017 are not disturbed,.

8. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)