

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1325 OF 2016
IN
CRIMINAL APPEAL NO.335 OF 2016

Saquib Abdul Hamid Nachan. .. Applicant
Vs
The State of Maharashtra. .. Respondent
—
Shri Sudeep Pasbola i/b Shri Rahul Arote for the Applicant.
Ms. Rohini Salian, Special Public Prosecutor for the State.
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CORAM : A.S. OKA & A.A.SAYED, JJ

DATED : 31ST JANUARY 2017

(At 5.15 p.m. in Court)

P.C.

1. In view of the administrative order dated 7th December 2016 passed by the Hon'ble the Chief Justice, this second Application for bail is placed before this Bench.

2. Under the impugned Judgment and Order which is subject matter of challenge in the Criminal Appeal No.335 of 2016, the Applicant has been convicted for the offence punishable under Section 4(a) of the Prevention of Terrorism Act, 2002 (for short “the POTA 2002”) and has been sentenced to suffer rigorous imprisonment for 10 years. He has been also convicted for the offences punishable under the Arms Act for which, there is a lesser sentence.

3. Earlier Application being Criminal Application No.815 of 2016 for grant of bail pending the Criminal Appeal was placed before this Bench. The Bench was not inclined to grant relief to the Applicant on the ground that after he was enlarged on bail during the pendency of the trial, on 4th August 2012, a serious offence was registered against him for the offence punishable under Sections 307 and 120(B) of the Indian Penal Code read with various Sections of the Arms Act. The Applicant was in custody in connection with the said case. When we expressed a view that we were not inclined to grant any relief to the Applicant as the Applicant misused the bail granted pending the trial, the earlier Application was withdrawn with liberty to file a fresh Application on the ground of change in circumstances.

4. The only change in circumstances pleaded in this Application is that on 21st October 2016, the learned Additional Sessions Judge, Thane, granted bail to the Applicant in connection with the said offence registered on 4th August 2012 vide C.R. No.121 of 2012 of Nizampura Police Station. We find that the bail has been granted to the Applicant by invoking the provisions of Sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (for short "CrPC") and not on any other ground. Admittedly, a chargesheet has been filed against the Applicant for the offence punishable under Sections 307 and 120(B)

of the Indian Penal Code on the basis of the said incident which has taken place after the Applicant was enlarged on bail in the very case. Therefore, in our view, grant of bail under Sub-section (2) of Section 167 of the CrPC will not bring about any change in circumstances requiring consideration of this second bail Application.

5. No other ground is urged in this Application. We make it clear that we have not dealt with the argument that as the Appeal is not likely to be heard before the Applicant undergoes the entire substantive sentence, he deserves to be enlarged on bail. It is for the Applicant to move the Regular Bench in that behalf.

6. Subject to what is observed above, we are of the view that no ground of change in circumstances is made out. Accordingly, the Application is rejected.

(A.A. SAYED, J)

(A.S. OKA, J)