

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2428 OF 2017

Mr.Abdul Majeed Abdul Wafa Khan ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Ashok M. Saraogi, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th NOVEMBER 2017.

P.C. :

1 Though this application is purported to be an application for grant of bail, the same is in fact, an application under Section 439(1)(a) of the Code of Criminal Procedure (hereinafter referred to as 'Code' for the sake of brevity) for modification of condition of the Bail Order dated 12/10/2017 passed by the learned Additional Sessions Judge, Thane in Criminal Bail Application No.2511 of 2017.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the Special Court is set up for trial of the offences punishable under the provisions of Indian Electricity Act and the applicant is accused of the offence

punishable under Section 135 of the Indian Electricity Act. He was granted pre-arrest bail by imposing a condition that he should deposit an amount of 20%. The learned Advocate further submitted that as the applicant was not in a position to deposit 20% amount as directed by the Special Court while releasing him on bail, he opted for surrendering himself. Then, fresh application for regular bail came to be filed. The learned Advocate further argued that the learned Special Court was pleased to direct release of the applicant/accused on bail in the said crime with a direction to deposit 50% of the amount of cost of electricity, alleged to be stolen by him by the prosecution. With this, the learned Advocate for the applicant/accused argued that because of penury, the applicant/accused was not even in a position to deposit 20% of the amount and imposing such a condition to deposit 50% amount virtually amounts to denying the bail to the present applicant, which is not the aim and object of Section 439 of the Code.

3 The learned Additional Public Prosecutor opposed the application by contending that the application itself is not maintainable.

4 I have carefully considered the rival submissions and also perused the material produced on record.

5 The allegations against the present applicant are to the effect that he is running a factory at Gothehar, District Thane. He had fixed a Jamar near the electricity meter to prevent the

meter showing correct reading regarding consumption of the electricity and in this way, he had committed theft of the electricity amounting to Rs.13,32,049/-. The record shows that initially, there was an Order of granting liberty with a direction to deposit 20% amount. The applicant was not in a position to fulfill that Order and, therefore, he had chosen to surrender. The learned Additional Session Judge, Thane, by an Order dated 12/10/2017, then imposed a condition to deposit 50% of amount for securing his actual release though the Bail Application of the present applicant is allowed.

6 The condition so imposed is virtually denying liberty to the present applicant without his due trial, even after the learned Special Court was of the opinion that the applicant deserves liberty. In this view of the matter and as the learned Advocate for the applicant has made a statement that the applicant is ready and willing to deposit 15% of the amount of alleged theft of electricity assessed by the prosecution, the following Order :

- (i) Condition No.2(a) of the operative portion of Order dated 12/10/2017 passed by the learned Additional Sessions Judge, Thane in Criminal Bail Application No.2511 of 2017 is modified and substituted with a condition that 'before furnishing the bail, the applicant to deposit 15% of the alleged cost of stolen electricity in the office of complainant Company or in the trial Court'.

(ii) The application stands disposed of accordingly.

(A.M.BADAR J.)