

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1413 OF 2016
IN
CRIMINAL APPEAL NO.1007 OF 2012**

Rahul @ Akshay Mishra)...Applicant

V/s.
State OF Maharashtra)...Respondent

Ms. Apeksha Vora, Advocate for the Applicant.

Mr. P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th JANUARY 2017.

P.C. :

This is an application for modification of the condition of the order dated 8.10.2012 granting bail to the applicant-accused.

2 Applicant-accused came to be convicted of the offences punishable under Sections 376,392 and 323 of IPC. For the offence punishable under Section 376, he is sentenced to suffer RI for 7 years and to pay fine of Rs.5,000/-. Lesser punishment is given for other offences and substantive sentences are directed to

run concurrently by the learned trial Court.

3 The appeal filed by the applicant challenging his conviction and sentence is already admitted by this Court. While releasing the applicant-accused on bail, this Court had directed him to report to the trial Court on every alternate Monday till disposal of the appeal. Applicant-accused has been tried by the Additional Sessions Judge, City Civil Court, Greater Bombay. The applicant-accused is stated to be permanent resident of Garhani, Charpokhari, Dist: Bhojpur in Bihar. The Applicant-accused has produced on record his election card as well as Adhar card. He has stated that he is prosecuting his studies in law and is appearing for examination of second year LL.B. Course. He is taking education at M.G.College affiliated to Magadh University, Bodhgaya.

4 Learned counsel for the applicant-accused argued that the condition directing the applicant-accused to report to the trial Court on every alternate Monday is virtually disrupting life of the applicant-accused as he is neither in a position to undertake his studies nor he can earn his livelihood at his native place by professing some occupation. The learned advocate for the

applicant-accused has argued that this condition is virtually encroaching upon the fundamental rights of the applicant-accused and, therefore, it needs to be relaxed.

5 The learned APP opposed the application.

6 Considering the fact that the applicant-accused is prosecuting studies of LL.B. Course and he is well settled in society having his election card as well as Adhar card, I am of the considered opinion that there is no likelihood of his abscondence during the pendency of the appeal. The appeal is of the year 2012. There is no likelihood of hearing the appeal in near future as applicant-accused is on bail and several appeals of prisoners undergoing jail sentence are pending for hearing. In this view of the matter, directing the applicant-accused to report to the trial Court at Bombay on every alternate Monday is a harsh condition, which is required to be relaxed because in past, it is seen that the applicant-accused has strictly abided by this condition. Therefore, the order:

(1) Application is allowed.

(2) Condition No.5 of the order dated

6.11.2012 passed in Criminal Application No.1720 of 2012 is modified by directing the applicant-accused to report to the trial Court twice a year i.e. the first Monday of June and first Monday of December till pendency of the appeal.

(A. M. BADAR, J.)