

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2609 OF 2016

Imran Alam NooruzzuhaApplicant

V/s.

Sr. Police Inspector and anotherRespondents

WITH
CRIMINAL APPLICATION NO. 210 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 2609 OF 2016

Nanda Hanmant PanaskarIntervenor

IN THE MATTER BETWEEN

Imran Alam NooruzzuhaApplicant

V/s.

Sr. Police Inspector and anotherRespondents

Mr. Mateen Shaikh Advocate for Applicant.

Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 24th MARCH, 2017.

PC :

Not on board. Upon production, taken on board.

1) The learned counsel for the applicant seeks liberty to withdraw the application.

2) At this juncture, the learned APP has submitted that in fact, applicant has approached Judicial Magistrate First Class, Thane, seeking enlargement on bail. Upon query made by this Court, the learned counsel for the applicant submits that an application is filed under section 437 (6) of Code of Criminal Procedure, 1973.

3) Section 437 (6) of Code of Criminal Procedure, 1973 reads as follows:

“437. When bail may be taken in case of non-bailable offence-

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs”.

4) The learned counsel for the applicant submits that the charge is framed and that the trial has not progressed and therefore, he is seeking enlargement on bail under section 437 (6) of Code of Criminal Procedure, 1973.

5) Complainant is present before the Court. The learned APP upon instructions submits that on every stipulated date, applicant only assures that he would pay the remainder amount to the complainant. Application is pending since 23/12/2016. Notice was issued on 04/01/2017. The learned APP upon instructions submits that application under section 437 (6) of Code of Criminal Procedure, 1973 was filed long ago. Today, for the first time, upon query made by the Court, the learned counsel for the applicant seeking liberty to withdraw the application.

6) Needless to reiterate that in fact, it was incumbent upon the applicant to withdraw the application pending before this Court prior to approaching the Magistrate under section 437 (6) of Code of Criminal Procedure, 1973.

7) Since the applicant is praying for withdrawal, prayer is granted.

However, the learned Judicial Magistrate First Class, Thane seized with R.C.C. No. 999 of 2016 shall consider the application on its own merits. The Magistrate shall also take note of the fact that the applicant had approached the Court of Judicial Magistrate First Class, Thane during the pendency of this application. Since January 2017, this Court was never apprised of the fact that an application seeking similar relief is pending before Lower Court. In fact on 16/03/2017, hearing of the application was adjourned at the request of the learned counsel for the applicant.

- 8) Application stands dismissed as withdrawn.
- 9) Applicant shall deposit a cost of Rs. 5,000/- in this Court within 2 weeks from today and produce the receipt of the payment before the learned Magistrate as condition precedent to hearing of the application under 437 (6) of Code of Criminal Procedure, 1973.
- 10) Registrar Judicial to send a copy of this order to Judicial Magistrate First Class, Thane seized with R.C.C. No. 999 of 2016, forthwith.

- 11) Intervention application is heard, allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)