

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1607 OF 2015

Navnit K. Mehta,
Age 74 years, Occ. Business,
Having his address at 80, Solitiare,
S.V. Road, Santacruz (W),
Mumbai 400054.

...Petitioner.

Vs.

1. State of Maharashtra,
(Through the Public Prosecutor)
2. Deepak Kantilal Doshi,
Adult, Occ. Chartered Accountant,
C/o. Rajendra and Company,
1311, Dalalmaal Towers,
211, Nariman Point,
Mumbai-400020.

...Respondents.

WITH

WRIT PETITION NO.1608 OF 2015

Shobhit Rajan,
Age 51 years, Occ. Business,
Having his address Solitiare-
80, S.V .Road, Santacruz (West),
Mumbai 400054.

....Petitioner.

vs.

1. Deepak Kantilal Doshi,
Adult, occ. Chartered Accountant,
C/o. Rajendra and Company,
1311, Dalalmaal Towers,
211, Nariman Point,

Mumbai-400020.

2. State of Maharashtra
Through the Economic Offences Wing,
Unit III, Mumbai.Respondents.

WITH

CRIMINAL APPLICATION NO.144 OF 2015

Shobhit Rajan,
Age 50 years, Occ. Businesss,
Having his address Solitiare
80, S.V. Road, Santacruz (West),
Mumbai 400054.Applicant.

Vs.

1. Deepak Kantilal Doshi,
Adult, Occ. Chartered Accountant,
C/o.Rajendra and Company,
1311, Dalalmal Towers,
211, Nariman Point,
Mumbai-400021.
2. State of Maharashtra,
Through the Economic Offences Wing,
Unit -III, Mumbai.Respondents.

Mr. Vibhav Krishna with Mr. Devang Lakhatia, Mr. Tahir Prandi i/by
Juris Consillis for the Applicant.

Mr. Hrishikesh Mundergi with Ms. Rhia Mehta i/by Vashi & Vashi
Advocates for Respondent No.1.

Mr. S.S.Hulke, APP for the State.

CORAM : A.S. GADKARI, J.

DATE : Reserved on 16.2.2018

Pronounced on 13.4.2018

JUDGMENT :

1. The Order dated 9.2.2015 passed in ABA NO. 304/2015 by the learned Additional Sessions Judge, Greater Mumbai, granting pre-arrest bail to the respondent Deepak K. Doshi is under challenge in all the above petitions.

2. The petitioner, Mr. Navnit K. Mehta in W.P. No.1607/2015 is the original complainant in CC No.99/SW/2014 filed against respondent No.2 Deepak K. Doshi (hereinafter referred to as "Respondent" for brevity) and five other accused persons for an offence punishable under Sections 109, 406, 418, 420, 464, 465, 467, 468, 471, 474, 477(A) read with 34 and 120(B) of the Indian Penal Code and under Sections 66D, 72A, 84G and 85 of the Information Technology Act, 2000. The learned Metropolitan Magistrate, 49th Court at Vikhroli, Mumbai was pleased to issue an Order of 'process' dated 6.5.2014 against the accused persons therein including the Respondent. By further Order dated 13.5.2014, the learned Magistrate was pleased to issue summons against the Respondent. That, Respondent thereafter appeared before the concerned Magistrate and filed an application under Section 437 of the Cr.P.C. for bail which was allowed by the concerned Court by its

order dated 19.7.2014.

3. The Respondent thereafter filed applications for exemption from attending the Trial Court on various dates on the ground that he had complied with the bail formalities and his presence on each and every occasion is not necessary. The learned Magistrate has allowed the said applications.

4. Mr. Shobhit J. Rajan is the petitioner in W. P. No.1608 of 2015 filed under Section 227 of the Constitution of India and the applicant in Application No. 144 of 2015 filed under Section 439(2) of the Cr.P.C., is the original complainant in CC No.234/SW/2013 filed before the 9th Metropolitan Magistrate at Bandra, Mumbai on 16.8.2013 and for offence punishable under Section 109, 114, 384, 406, 417, 420, 465, 467, 468, 471, 474, 477(A) read with Section 34 and 120(B) of the Indian Penal Code against the Respondent and other seven accused persons. In the said complaint, the learned Metropolitan Magistrate at Bandra was pleased to pass an Order dated 16.8.2013, under Section 156(3) of the Cr.P.C., directing investigation into the said complaint by Khar Police Station, Mumbai. On the basis of the said Order dated 16.8.2013, the Khar Police Station registered MECR No.1/2013 dated 28.8.2013 . That,

on 15.9.2013 the investigation of said MECR No.1/2013 was transferred from Khar Police Station to Economic Offences Wing, Crime Branch, Unit-3, Mumbai and the said Investigating Agency renumbered the said crime as MECR No.11/2013. The Economic Offences Wing issued a summons to the Respondent for appearing before it on 25.7.2014. The Respondent replied the said summons by a letter of response dated 4.8.2014 and also gave a letter cum statement dated 10.1.2015 to the Investigating Agency. That, EOW, Mumbai further issued a summons to the Respondent on 25.7.2014.

5. The facts narrated in the herein above in paragraphs Nos.2 to 4 are the admitted facts on record.

6. In the premise, on 5.2.2015 the applicant filed an application for pre-arrest bail bearing ABA No.304/2015 before the Sessions Court at Mumbai. In the said application, the applicant has mentioned CC No.99/SW/2014 pending on the file of the learned Metropolitan Magistrate, 31st Court at Vikhroli, Mumbai, in the cause title and in the prayer clause. The applicant has also stated that, the said complaint was being concurrently investigated by the Economic Offences Wing, Unit No.3, CB, CID, Mumbai.

7. The learned Additional Sessions Judge, Greater Mumbai by the

impugned Order dated 9.2.2015 was pleased to allow the said application No.304 of 2015 and granted pre-arrest bail to the Respondent on certain conditions. In the operative part of the impugned Order, the learned Additional Sessions Judge has categorically observed that the Respondent was being granted pre-arrest bail in MECR No.11/2013 and 1/2013 registered with Economic Offence Wing Unit No.3, CB CID Mumbai and Khar Police Station Mumbai respectively.

8. The learned counsel Mr. Vaibhav Krishna, while arguing on behalf of the petitioner in Writ Petition No.1607/2015 submitted that, the application of the Respondent for pre-arrest bail was specifically in CC No.99/SW/2014 and once the Respondent is granted bail by the Magistrate and the Respondent compiles with the necessary formalities therein, there was no occasion for the Respondent to file an application for pre-arrest bail before the Sessions Court. He submitted that, in the said CC No.99/SW/2014 the trial Court has already taken cognizance and in response to the process issued therein the Respondent had appeared before the Court and has complied with the formalities for bail and therefore, the application preferred by the Respondent before the Court of

Sessions for pre-arrest bail was bad-in-law and the learned Additional Sessions Judge ought not to have entertained the same. He therefore, submitted that, the impugned order may be quashed and set aside.

9. At this stage, it is to be noted here that, it is the settled position of law that once the accused is released on regular bail after taking cognizance of the offence, there is no question of grant of pre-arrest bail, inter alia filling an application for pre-arrest bail by the accused. In the present case, though the applicant and/or his Advocate in the cause title and prayer clause of the application ABA No.304/2015 has mentioned CC No.99/SW/2014 as the case in which he is seeking pre-arrest bail, the learned Additional Sessions Judge while allowing the application has categorically and specifically granted him pre-arrest bail in MECR No.11/2013 registered with Economic Offences Wing Unit No.3, CB CID, Mumbai and in MECR NO.1/2013 with Khar Police Station, Mumbai. As noted earlier, the MECR No.1/2013 was originally registered with Khar Police Station, was transferred for further investigation to the Economic Offences Wing, Crime Branch, Unit No.3, Mumbai and the said Investigating Agency has renumbered it as MECR No.11/2013.

It is thus clear that, the learned Additional Sessions Judge has granted pre-arrest bail to the Respondent in MECR No.11/2013 which was being investigated by Economic Offences Wing, Unit -3, CB CID, Mumbai.

10. After perusing the record, this Court is of the considered view that there is every reason to believe, infer and conclude that the impugned order dated 9.2.2015 is passed in MECR No.11/2013 which was being investigated by Economic Offence Wing, Unit No.3, CB CID, Mumbai, originally registered with Khar Police Station as MECR No.1/2013 arising out of CC No.234/SW/2013 filed by Mr. Shobhit Rajan and the mentioning of CC No.99/SW/2014 in the cause title and prayer clause of ABA No.304/2015 by the Respondent and/or his Advocate was a sheer mistake occurred due to inadvertence.

I therefore find no merits in Writ Petition No.1607/2017 and the same is accordingly rejected with the aforesaid clarification.

11. Mr. Vaibhav Krishna while arguing for the petitioner in Writ Petition No.1608/2015 and the applicant in Criminal Application No.144/2015 submitted that the Respondent had filed the said Application being ABA No.304/2015 specifically in CC

No.99/SW/2014 without mentioning the Complaint Case No.234/SW/2013 filed by Shri. Shobhit Rajan and therefore, the order passed by the learned Additional Sessions Judge, granting pre-arrest bail to the Respondent in MECR No.11/2013 suffers from perversity, non application of mind, predetermination and contrary to the law. He submitted that the Investigating Officer while filing report in the said application i.e. ABA No.304/2015 had filed wrong report pertaining to the MECR No.11/2013 without verifying the reliefs prayed in the said ABA No.304/2015. He further submitted that the learned Trial Judge as such unreasonably, equate and compared and relied upon two different complaints bearing No.11/2013 which was being investigated by the Economic offence Wing, Mumbai in a complaint bearing CC No.234/SW/2013 filed by the Petitioner Shri. Shobhit Rajan with the complaint bearing CC No.99/SW/2014 filed by the complainant Shri. Navnit Mehta, which was pending on the file of Metropolitan Magistrate, 31st Court at Vikhroli. He further submitted that the learned Additional Sessions Judge has granted anticipatory bail in MECR No.11/2013 on the basis of the facts in CC No.99/SW/2014 filed by the complainant Shri. Navnit Mehta pending on the file of Metropolitan Magistrate,

31st Court at Vikhroli. He therefore, submitted that the impugned order dated 9.2.2015 passed by the learned Additional Sessions Judge, Greater Mumbai therefore deserves to be quashed and set aside on merits. He submitted that Writ Petition No.1608/2015 therefore, deserves to be allowed by quashing and setting aside the impugned Order dated 9.2.2015 passed by the learned Additional Sessions Judge in ABA No.304/2015.

12. Mr. Mundergi, the learned counsel appearing for the Respondent submitted that there is no substance in the contentions of the petitioner. That, there was no confusion in the pleadings of the Respondent in the anticipatory bail application except mentioning an incorrect case number in the cause title and in the prayer clause. He submitted that the facts narrated by way of pleadings in the said application were pertaining to MECR No.11/2013. He submitted that it is the reason that the petitioner Shri. Shobhit Rajan therefore, intervened in the said application being an interested person in the said proceedings and in Para No.1 of his intervention application has clearly mentioned that, he is the original complainant in MECR No.11/2013 which was being investigated by Economic Offences Wing, Mumbai. He submitted

that the cause title of the impugned Order will clearly denote the presence of the petitioner in the proceedings and he was thereafter heard at length by the trial Court. He submitted that the Trial Court has not committed error while passing the impugned Order in MECR No.11/2013 as ABA NO.304/2015 was in fact filed in MECR No.11/2013. He submitted that the Writ Petition No.1608/2015 and Criminal Application No.144/2015 are misconceived and are filed only with a view to harass the Respondent and nothing else.

13. After perusing the record minutely, this Court is of the view that the learned Additional Sessions Judge, Greater Mumbai while passing the impugned Order has taken into consideration the facts mentioned in the Complaint No.234/SW/2013 and the record of the investigation pertaining to MECR No.11/2013. The trial Court has made a reference of the complaint No.99/SW/2014 only with a view to evaluate the facts in both the complainants. It is to be noted here that, CC No.99/SW/2014 filed by Shri. Navnit Mehta and CC No.234/SW/2013 filed by Shobhit Rajan proceeds on the same set of facts with same set of accused persons and therefore, the learned Additional Sessions Judge in Para 15 of the impugned Order has observed that, with similar allegations in the previous complaint i.e.

filed by Shri. Navnit Mehta the Respondent was arrested and was subsequently released on bail and therefore, for the same reasons his custodial interrogation in MECR No.11/2013 is not necessary. I concur with the finding recorded by the trial Court. It is indubitably clear from the language of the impugned order that the same is passed in MECR No.11/2013 by the Trial Court, granting pre-arrest bail to the Respondent on merits. Even otherwise also the material on record clearly indicates that, the Respondent deserves to be released on pre arrest bail in the complaint filed by petitioner Mr. Shobhit Rajan.

I find no substance in the contentions of the petitioner Shri. Shobhit Rajan in the petition and therefore, the Writ Petition No.1608/1015 is accordingly rejected.

14. As noted earlier, the Criminal Application No.144/2015 is filed challenging the same impugned Order dated 9.2.2015 passed by learned Additional Sessions Judge, Greater Mumbai and in view of the Order passed in Writ Petition No.1608/2015, no separate order is necessary in Criminal Application No.144/2015 and the same is accordingly rejected.

(A.S. GADKARI, J.)