

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILA PPLICATION NO.988 OF 2018

1. Nasser Abdul Salam Ghori, Age 29 years,
Occ.Business, R/o.402, Patel Complex,
B-Wing, Green View Building, Mira Road (E),
Thane.

2. Dharmesh Bhupendra Soni, Age 29 years,
Occ.Business, R/o.D-315, Nirmal Kunj CHS Ltd;
S.V.Cross Road, Bhayander (E), Thane.
(At present lodged at Thane jail).

Applicants

versus

The State of Maharashtra

Respondent

Mr.Gaurav Parkar for applicants.
Mr.Ashwin Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 23rd April 2018

PC :

1. Not on board. Upon moving a praecipe, the matter is listed on board. Considering the fact that earlier bail application was rejected by this Bench, present second bail application is listed before this Bench.

2. This is an application for bail in connection with C.R.No.I-596 of 2016, registered with Kashimira Police Station, Thane. The offences were registered under Sections 419, 420, 384, 468, 471, 201 read with 120B of Indian Penal Code and Sections 20 and 21 of Indian Telegraph Act as well as Sections 66(b)(d), 71 and 72 of Information Technology Act.

3. This is the second bail application before this Court. Since the earlier Bail Application bearing Nos.476 of 2017 and 418 of 2017 were rejected by this Court vide common order dated 4th August 2017. This application has been placed before me in view of the earlier order and in accordance with order dated 16th April 2018.

4. Learned counsel for applicants submitted that the earlier application was rejected on 4th August 2017, however, the trial has not yet commenced. Even charge has not been framed. It is submitted that there are about 189 accused involved in this case. About 172 accused are released on bail. It is further submitted that the prosecution is relying on large number of witnesses (over 200 witnesses) which are proposed to be examined before the Trial Court. The applicants are in custody since 5th October 2016.

5. Learned advocate for applicants further submitted that the applicants are entitled for bail on the ground of parity. He relied upon the order passed by Apex Court in Criminal Appeal No.512 of 2018 granting bail to the co-accused Jagdish Ramniklal Kanani by order dated 9th April 2018. The said order was passed in an appeal preferred against the order rejecting his bail application by this Court vide order dated 4th August 2017. It is submitted that the role attributed to the accused who is being granted bail by the Apex Court is more serious than the applicants. The trial is pending before the Court of JMFC, 7th Court, Thane. In view of the circumstances, it is submitted that the trial would not be completed within a short span of time, and considering the fact that the Hon'ble Supreme Court has granted bail to Jagdish Kanani, the applicants may also be directed to be released on bail. It is submitted that grant of bail to

the aforesaid accused is change in circumstance to consider this application.

6. Learned APP submitted that the role played by the applicants is more serious than the role of Jagdish Kanani. He pointed out the observations of this Court made in the order dated 4th August 2016, wherein the role attributed to the applicants has been narrated and reasons for rejecting bail to the applicants are being assigned. Learned APP submitted that the applicants were actively involved in the crime and statement of one of the witness Bhavesh clearly indicates that Rs.35 lakh was handed over to applicant no.1 herein. It is further submitted that the directions can be issued to the Trial Court to expedite the process of framing charge. The summons has been issued to the accused who are on bail for remaining present before the Court for the purpose of framing of charge. It is submitted, on instructions, that about 56 accused have been served with summons for appearance before the Trial Court for the purpose of framing charge and others who are on bail are yet to be served with summons. It is submitted that the prosecution would endeavour to produce the accused who are served with the summons and the charge would be framed expeditiously. It is therefore submitted that the application may be rejected.

7. I have perused the order of Hon'ble Supreme Court where bail is granted to the co-accused Jagdish Kanani. I have also perused the observations made in the order dated 4th August 2016 passed by this Court while rejecting the application for bail filed by the applicants as well as co-accused Jagdish Kanani. The role attributed to the applicants is that they were acting as managers at Hari Om I.T.Park/

Call Centre. The applicant no.1 is also attributed the role of accepting Rs.35 lakh. However, it is the prosecution case that the co-accused Jagdish Kanani has played a major role along with accused Sagar Thakkar who is the master mind in the crime. Jagdish Kanani was allegedly the owner of the call centre and the data received from him was being used allegedly for making calls to the American citizens. The Hon'ble Supreme Court has granted bail to Jagdish Kanani on the basis of the fact that said accused is in custody from 16th October 2016 and that the trial is yet to commence. It would be appropriate to incorporate the order of Hon'ble Supreme Court which reads thus :

- “1. We have heard the learned counsels for the parties.*
- 2. Leave granted.*
- 3. The accused appellant has been in custody since 16th October, 2016. The trial is yet to commence. A large number of witnesses (over 200 witnesses) is proposed to be examined by the prosecution.*
- 4. Having regard to the period of custody suffered and the likely period which would be taken for completion of the trial we are of the view that appellant should be released on bail. We order accordingly. Therefore, the appellant is ordered to be released on bail to the satisfaction of the learned trial Court in connection with C.R.No.I-596 of 2016 registered with Kashimira Police Station, Thane rural.*
- 5. The learned trial Court is free to impose condition(s) as may be considered appropriate. The appellant is directed to surrender his passport before the learned Trial Court.*
- 6. Consequently, the order of the High Court is set aside and the present appeal is disposed of in the above terms.”*

8. It is apparent that the co-accused has been granted bail by the Apex Court on the ground that trial is yet to commence and there are

number of witnesses proposed to be examined by the prosecution. The bail has been granted having regard to the period of custody suffered and the period likely to be consumed for completion of the trial. The applicants are in custody from 5th October 2016. I have also considered the application for bail filed at the behest of co-accused Akhilesh Ajay Singh @ Ramsingh being Bail Application No.278 of 2018, who has been directed to be released on bail vide order dated 10th April 2018 in the light of bail order passed by the Apex Court referred to hereinabove. In the light of the order passed by Apex Court, the applicants herein can be released on bail.

9. Hence, I pass following order :

ORDER

- (i) The applicants are ordered to be released on bail in connection with C.R.No.I-596 of 2016, registered with Kashimira Police Station, Thane, to the satisfaction of the Trial Court;
- (ii) The Trial Court is free to impose condition(s) as may be considered appropriate;
- (iii) The applicants are directed to surrender their passports before the learned Trial Court. In case they do not have passports, they shall file an affidavit before the Trial Court indicating that they do not hold the passports;
- (iv) Criminal Bail Application No.988 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)