

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1980 OF 2018

Rashesh Mukesh Shah Applicant

Vs.

The State of Maharashtra Respondent
(At the instance of Dombivli Police
Station vide CR No. 23/2015)

Mr. Raju M. Yamgar a/w Mr. Avinash M. Reddy for the Applicant.
Mr. Y.Y. Dabke, APP for the State.
Ms. V.S. Suryawanshi, PSI, Dombivli Police Station.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 1st November 2018

P.C.:

1 Heard the learned counsel for the applicant and the
learned APP.

2 The applicant herein is arrested on 4th March 2015 in
Crime No.23 of 2015, registered at Dombivli Police Station for the
offences punishable under Sections 420, 406 read with 34 Indian
Penal Code. The investigation is completed and the charge-sheet is
filed on 23rd April 2015.

3 Taking into consideration the gravity of the offence, his applications under Section 439 of Cr.PC. were rejected. It was also demonstrated before this Court that the applicant has committed similar offences not only in the state of Maharashtra but in the state of Gujarat also and has been charge-sheeted in the said offences.

4 This is an application under Section 436-A of Cr.P.C., 1973. The Section reads as follows :

“436-A. Maximum period for which an under-trial prisoner can be detained.-- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties :

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties :

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

Explanation.-- In computing the period of detention under this Section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

5 It is a matter of record that the applicant has been in custody for 3½ years. The offence punishable under Section 420 Indian Penal Code contemplates imprisonment upto seven years. Hence, it is clear that the applicant has served more than half of the sentences.

6 The learned Apex Court in the case of Bhim Singh Vs. Union of India and Others, reported in (2015),13 Supreme Court Cases, page 605 has issued directions to all the High Courts in the country to comply with the provisions under Section 436-A of Cr.P.C. In view of this, the applicant deserves to be enlarged on bail.

7 It is made clear that this Court has not gone into the merits of the matter and the applicant is being enlarged on bail only under the provisions of Section 436-A of Cr.P.C.

ORDER

- i) The application is allowed.
- ii) The applicant be enlarged on bail in Crime No. 23 of 2015, registered at Dombivli Police Station, on furnishing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lac Only) with two or more solvent sureties in the like amount.
- iii) The applicant shall give an undertaking to the police station within two weeks from the date of his release that he shall attend each and every scheduled dates before the Court of Magistrate and shall not protract the proceedings.

(Smt. Sadhana S. Jadhav, J)