

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

CRIMINAL BAIL APPLICATION NO. 2088 OF 2017

Fuzail Ahmed Suhel Ahmed Khan ... Applicant.

Versus

State of Maharashtra ... Respondent.

Mr. Bhaskar J. Sarwade, Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the State.

CORAM : REVATI MOHITE DERE, J.

DATE : FEBRUARY 15, 2018

P.C.

1 Heard learned counsel for the parties.

2 This is the third bail application preferred by the Applicant. The first application preferred by the Applicant was dismissed as withdrawn. The second application was rejected on merits with a direction to the Superintendent, Taloja Prison and Superintendent Arther Road Prison to produce all the accused on the dates given before the learned Sessions Judge before whom the sessions case, being Sessions Case No. 121 of 2015 is pending.

3 The learned counsel for the applicant submits that despite the said direction, no steps have been taken by the

concerned authorities to produce the accused before the learned Sessions Judge and as a result of which the trial cannot proceed. He submits that not only the present applicant is unwell but even his daughter is admitted in the hospital and is in a critical condition. He submits that even otherwise, the allegation as against the applicant was that he was found with gold ornaments which he was taking to sell. He submits that the applicant was not present at the spot of incident and has not been identified by the complainant. He submits that some of the co-accused have been enlarged on bail by the learned Sessions Judge.

4 The learned APP opposed the bail application. He submits that this a third bail application and that no new ground is made out for enlarging the applicant on bail.

5 Perused the papers.

6 It is not in dispute that the complainant has not identified the applicant. The allegation as against the applicant is that he was in touch with the other co-accused on telephone and that he was arrested on the way when he was going to sell the gold ornaments (worth Rs. 8 lakhs) which were allegedly stolen from the complainant. It is also not in dispute that in the earlier cases registered as against the applicant, the applicant has been acquitted from the said cases. The said fact was not brought

to the notice of this court when the second bail application was decided. It is also not in dispute, that despite directions given by this court in July, 2016, the co-accused including the present applicant have not been produced before the learned Sessions Judge, as a result of which, the trial cannot proceed. The applicant has no antecedents. It is also not in dispute that except the present case, no other case is pending qua the applicant.

7 Considering the aforesaid position, the medical condition of the applicant and his daughter and the fact that the applicant has no antecedents, the bail application of the applicant is allowed and the applicant is enlarged on bail on the following conditions :

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 5,000/- with one surety in the like amount.
- ii) The Applicant shall report to the Byculla Police Station on the first Sunday of every month from 10 a.m. to 12 noon till conclusion of the trial.
- iii) The Applicant shall attend the court on the dates given by the trial court. If there is consecutive two defaults

in not appearing before the trial court, the prosecution will be at liberty to file an application for cancellation of the bail of the applicant.

iv) The Applicant shall not contact the complainant or any other witnesses.

v) An undertaking to the aforesaid clauses (ii), (iii) and (iv) to be filed by the Applicant with the Registry of the Trial Court, within two weeks from the date of his release.

8 The Application is allowed and disposed of in the above terms.

9 It is made clear that the observations made herein are prima facie and are confined to this application and the learned Sessions Judge to decide the case on its own merits, uninfluenced by the observations made herein.

All concerned to act on the authenticated copy of this order, duly issued by the Registry of this court.

(REVATI MOHITE DERE, J.)