

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

BAIL APPLICATION NO.2110 OF 2017

Mr. Murti Silvaraj Harijan Applicant
Age : 50 years, Occ.: Auto Driving,
R/o Room No. 3, Rama Shankar Singh
Chawl, Bihari Tekadi, Poisar,
Kandivli (East), Mumbai – 400 001

Vs.

The State of Maharashtra Respondent
(Through Samta Nagar Police Station)
Kandivli (East), Mumbai

Mr. Mohd Saeed Asgar Moghal for the Applicant.
Mr. Y.M. Nakhwa APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 30th November 2018

P.C.:

1 This is a subsequent application seeking enlargement on bail. The earlier application was rejected on 7th February 2017. The applicant herein is arrested on 31st May 2015 in Crime No. 268 of 2015, registered at Samata Nagar Police Station, Kandivali for the offences punishable under Sections 307, 504 read with 34 of Indian Penal Code.

2 This Court had taken into consideration the fact that the applicant is being prosecuted in 26 crimes registered at Samata Nagar Police Station for similar offences including offences punishable under Sections 353, 452, 394 etc. It had also taken into consideration the fact that by an order dated 13th July 2011, he was externed for nine months and despite that, there was no reformation. By an order dated 30th August 2014, he was given 10 days custody under Section 151 Sub-Clause 3 of the Code of Criminal Procedure. That on 7th October 2014, he had executed a bond of good behaviour, which was to be in force for a period of three years and that it was during this period, that the present offence was registered against the present applicant.

3 Learned counsel for the applicant has once again argued the matter on merits and has pointed out several lacunae thereby submitting a false case has been foisted upon him. However, the said submission cannot be taken into consideration. Learned counsel

for the applicant in order to highlight the change in circumstance has placed on record the medical certificate issued by Shri. Harilal Bhagwati Hospital, Borivali (West) dated 3rd July 2017 showing that the applicant was taken to the Hospital on 31st May 2015 and that he had sustained an abrasion on frontal scalp and history was “assault by four persons with sharp heavy metallic object”. The Doctor has certified that the said injury is in simple in nature. Learned counsel submits that there has been suppression of facts on the parts of the prosecution and that the incident has not occurred in the manner in which it is investigated by the police. Learned APP could not verify the genuineness of issuance of this certificate and there is nothing on record to even show as to whether this certificate was issued on the basis of any records.

4 Be that as it may, the learned counsel for the applicant has placed reliance upon the order of this Court dated 14th November 2017 passed by this Court (Coram : A.M. Badar, J.) in Criminal Bail Application No. 2171 of 2017 and has submitted that in similar circumstances and more particularly in an offence registered at

Samata Nagar police station, the applicant was enlarged on bail, although he had chequered history and was also externed from the said area.

5 In the present case, the conduct of the applicant is beyond control as despite passing of externment order, there was no reformation nor he had abided by his undertaking. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in Sanjay Chandra Vs. C.B.I. (Criminal Appeal No. 2178 of 2011 arising out of SLP (Cri.) No. 5650 of 2011) dated 23rd November 2011 and submitted that the observations of the Court reiterating the principles laid down in the case of Siddharam Satlinigappa Mhetre Vs. State of Maharashtra, reported in (2011), 1 Supreme Court Cases, 694 that “personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case”.

6 In fact, the only contention of the learned counsel for the applicant is that till today the charge is not framed against the

applicant, although the charge-sheet is filed sometime in September 2015.

7 The punishment contemplated for offence punishable under Section 307 of Indian Penal Code are as follows:

“307. **Attempt to murder.**--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned”.

8 In view of this, it would be necessary to consider the present application under Section 436-A of the Code of Criminal Procedure as the applicant has been in custody for more than three years. Moreover, the medical certificate is brought on record to show that the accused-applicant was injured on 31st May 2017. The applicant deserves to be enlarged on bail, hence, the following order :

ORDER

- i) The application is allowed and disposed of.
- ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall not reside in Mumbai and Navi Mumbai till the conclusion of the trial except for the dates before the Sessions Court at Dindoshi.
- iv) On the date assigned before the Court, the applicant shall first report to Samata Nagar Police Station and attend the dates at Dindoshi Court.
- v) The applicant shall furnish his present address and telephone numbers to the Police.
- vi) Upon failure to attend any two consecutive dates, the Sessions Court at Dindoshi shall report the same to the High Court and the prosecution would be at liberty to file an application under Section 439(2) of Cr.P.C. seeking cancellation of bail.

(Smt. Sadhana S. Jadhav, J)