

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CR. APPLICATION No. 475 of 2018

Salim Sultanali Batada	..Applicant.
Vs	
State of Maharashtra	..Respondent.

WITH
CR. APPLICATION No. 476 of 2018

Suresh Kachu Bhadke	..Applicant.
Vs	
State of Maharashtra	..Respondent.

WITH
CR. APPLICATION No. 477 of 2018

Irshad Mehmood Farooqui	..Applicant.
Vs	
State of Maharashtra	..Respondent.

WITH
CR. APPLICATION No. 478 of 2018

Bhagwant Bhanudas Pathak	..Applicant.
Vs	
State of Maharashtra	..Respondent.

Mr. Aashish Satpute, Advocate for the Applicants.
Mr. Ajay Patil, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATE : 11TH SEPTEMBER, 2018

P.C:-

1 By the above applications the applicant have sought modification of condition in clause (2) of order dated 24th July, 2018 whereby the learned Additional Sessions Judge, Nashik has directed each of the applicants to deposit a sum of Rs.1,69,595/- as a security. The clause (2) of the order dated 24/7/2018 reads thus :-

“2. In the event of arrest, applicants in all applications be released on their executing P.R. and S.B. of Rs.15,000/-each and on condition of depositing Rs.1,69,595/- (Rupees One lac, Sixty Nine Thousand, Five Hundred, Ninety Five only) [1/5th part of total amount Rs.8,47,975/-] by each applicant as a security in the court on or before 31/7/2018 which will remain as a security till trial of the case. On failure of depositing aforesaid amount by them, bail will automatically stand cancelled.

2) Heard Mr. Satpute, learned counsel for the applicants and Mr. Ajay Patil, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3) The record reveals that Crime No. II-206 of 2018 has been registered against the applicants at Sarkarwada Police Station Nashik for having committed offences punishable under Section 82 and 83 of the Registration Act, 1905. The allegations against the applicants are that they had given false information about construction of house by showing it as open plot and thereby caused loss to the Government to the tune of Rs.8,47,975/-. Apprehending arrest in the said crime the applicants had filed applications under Section 438 of Cr.P.C. before the learned Additional Sessions Judge, Nashik. The said application was allowed and in the event of arrest the applicants were ordered to be released on furnishing by each of them bail bonds of Rs.15,000/-and on condition of depositing Rs.1,69,595/-by each of them. The applicants filed application before the learned Additional Sessions Judge to modify the said condition whereby they were directed to deposit Rs.1,69,595/-. By order dated 30th July, 2018, the learned Addl.Sessions Judge has rejected the said application. The applicants have therefore filed these applications for modifying the said condition.

4) Shri Ashish Satpute, learned counsel for the applicants has placed reliance on the judgment of the Apex Court in Sumit vs. State of NCT Delhi in Criminal Appeal No. 1436 of 2013, the Apex Court observed thus :-

“12. While exercising power under section 438 of the Code, the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under section 438 (1), appropriate condition can be imposed under Section 438 (2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint.

16. The words “any condition” used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

5) Considering the aforesaid proposition, I am of the considered view that the learned Additional Sessions Judge was not justified in directing the applicants to deposit a sum of Rs.1,69,595/-by each of them. Said condition therefore needs to be modified and is accordingly modified as under :-

The condition requiring the applicants to deposit Rs.1,69,595/-by each of them as a security in the Court stands modified and deleted. However, rest of the conditions shall stand as it is.

6) Applications are accordingly disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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