

Vat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION No. 2300 OF 2018**

Salman Shakil Aadmane

....Applicant

Vs.

The State of Maharashtra

....Respondent

Mr. Gaurav Parkar for Applicant

Mr. S.H. Yadav -APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 26, 2018

P.C.:

1. Heard.

2. This is a subsequent application seeking enlargement on bail under section 439 of the Code of Criminal Procedure, 1973.

3. The previous application was rejected by this Court on 18th November, 2018 after considering the papers of investigation and the allegations leveled against the Applicant.

4. The Applicant has been charge-sheeted for the offences punishable under section 364A, 363, 384, 387, 342 r/w. 120B of the Indian Penal Code.

5. The learned counsel for the Appellant vehemently submits that the change in circumstances are as follows:

. In the previous bail application although the application was rejected on merits, the criminal antecedents of the Applicant were taken into consideration. There were serious offences registered against the Applicant at Shrirampur and Chakalamba Police Station.

. The Applicant submits that during the pendency of the trial in the present case i.e. Sessions Case No. 44 of 2016, the Applicant herein has been acquitted in Crime No. 69 of 2013 and the other case as well and, therefore, the Applicant deserves to be enlarged on bail and in Crime No.556 of 2013 where the Applicant was charge-sheeted for offence punishable under section 354, 323, 504,506 r/w. 34 of the Indian Penal Code. It appears that in case No. 556 of 2012, the Complainant had resigned from his earlier statement as far as the offence punishable under section 354 of the IPC was concerned. In case No. 314 of 2012, the Applicant was charge-sheeted for the offence punishable under section 324, 323, 504, 506 of the Indian Penal Code. In that case also the complainant has resigned from his earlier statement and has not supported the prosecution and, therefore, he has been acquitted.

6. The learned APP submits that the present case is

registered for an offence punishable under section 364A of IPC, where the punishment contemplated is life imprisonment. It is also submitted that in the eventuality that the Applicant is enlarged on bail, the witness may be won-over and they may not support the prosecution as has happened in the previous two cases.

7. The learned APP submits that the prosecution deserves an opportunity to prove the case against the Applicant and, therefore, the application be rejected.

8. The second ground for seeking enlargement the applicant on bail is that although the case is committed to the Sessions Court two years' ago, the trial has not yet been commenced and, therefore, the Applicant deserves to be enlarged on bail.

9. The learned counsel for the Applicant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **State of Kerala Vs. Raneef, decided on 3rd January, 2011.** In the said case the Applicant was granted bail by the High Court of Kerala and the same was challenged by the State and more over the Applicant was charge-sheeted under the provisions of the Indian Penal Code and the Explosive Substances Act. It was a case

where a book entitled 'Jihad' was said to have been found in the house was a Malayalam translation of a book written in Urdu in 1927 by a well known and respected religious scholar, Maulana Sayyid Abdul Ala Mandoodi and has been in circulation for 83 years and is available in many book shops. The second case relied upon by the learned counsel for the Appellant is the judgment of the High Court of Madhya Pradesh (Jabalpur Bench) in the case of **Manohar Vs. State of M.P. , decided on 2nd April, 2007** wherein the accused was charge-sheeted for an offence punishable under sections 34 and 306 of the Indian Penal Code.

10. All the facts in both the cases would be at variance and that from the facts of the present case, and, therefore, they cannot be considered for enlarging the Applicant on bail. This Court cannot be oblivious of the fact that on the previous occasion, the merits of the matter were taken into consideration on the basis of the papers of investigation. It is in these circumstances, this Court is of the opinion that no case is made out by the Applicant for grant of bail. The application stands rejected.

11. However, the Learned Sessions Judge, Nipad seized with the Sessions Case No. 44 of 2016 shall make every endeavor to

expedite the trial and to conclude the recording of evidence as far as possible within 10 months from the date of framing of charge.

Bail application stands disposed of in the aforesaid terms.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam