

Sarnobat

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

CRIMINAL BAIL APPLICATION NO. 2355 OF 2017

Rashid Rafiq Khdri.

.. Applicant.

Vs.

State of Maharashtra.

.. Respondent.

Mr. K. P. Reshma Ravi i/b K. P. Ravi for the Applicant.

Ms. R. M. Gadhavi, for the Respondent/State.

Mr. Jaydeep Gaikwad, PI, Sir. J.J. Marg Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th JANUARY, 2018.

P. C. :

1. This is a second application for bail. The applicant is arrested in connection with C.R. No. 177 of 2016 registered with Sir. J.J. Marg Police Station for offence under Sections 465, 467, 471 and 420 of I.P.C. as well as under the provisions of Section 10, 11 and 12 of the Maharashtra Act, XIII of 2001.

2. The earlier application preferred by the applicant has been rejected by this Court, by order dated 29th June, 2017. The present application has been preferred by the applicant on the ground that the applicant is entitled for bail on the ground of parity.

3. The learned advocate for the applicant submitted that,

other accused are on bail. The accused Mohd. Arif Reshamwala has been granted bail by the Sessions Court, vide order dated 29th May, 2017. It is submitted that the said fact was not brought to the notice of this Court while pursuing the earlier application. It is further submitted that the applicant has been involved in the cases on the statement of co-accused who is a student and impleaded the accused in the case. The said accused is also granted bail. The main accused Dr. Abdul Mirza is absconding. It is further submitted that while passing order dated 29th June, 2017 this Court has observed that the complainant's son wanted to take admission for MBBS. It is submitted that factually the said averment is not correct, as the complaint is not lodged by the father of the student.

4. It is further submitted that the applicant is in custody for more than year and is ailing. It is submitted that he was the sole earning member of the family. It is further submitted that the applicant being in custody, his family is suffering and is required to face financial constraints. It is submitted that the cases of criminal trespass referred in earlier orders, are in relation to the disputes on account of property and there are no other criminal antecedents against the applicant. It is also submitted that, there is no recovery from the applicant as alleged by the prosecution.

5. Learned APP submitted that there is no change in

circumstances and no new ground is made out for grant of bail. The application for anticipatory bail preferred by the main accused Dr. Abdul Mirza has been rejected by this Court and he is absconding. It is further submitted that the co-accused Mohd. Arif Reshamwala was granted bail by the Sessions Court on the ground that the co-accused Santosh Waghmare is released on bail. It is submitted that the said observations was incorrect as Santosh Waghmare is in custody and bail was not granted. It is further submitted that the order granting bail to the said accused does not affect the merits of the case. The learned advocate for the applicant further submitted that the application for cancellation of bail granted to Mohd. Arif Reshamwala was preferred before Sessions Court on the aforesaid ground which has been rejected.

6. Ld. APP further submitted that the applicant's involvement is reflected in the charge-sheet and on the basis of the statements of the witnesses. The earlier application was rejected on merits. No ground for entertaining the present application is made out.

7. Perused the order dated 29th June, 2017. While rejecting the said application, the merits of the case was discussed and the Court had declined to grant bail to the applicant. The change in circumstances which is submitted by the applicant is that, the other accused viz. Mohd. Arif Reshamwala and the student are granted bail. The order granting bail to Reshamwala mention that he was granted

bail primarily on account of the fact that co-accused Santosh Waghmare has been released on bail. It is true that the application for cancellation of bail preferred by the State in respect to the said accused has been rejected by the Sessions Court. However, the fact remains that the accused Santosh Waghmare as stated by the prosecution, continues to be in custody. The other grounds raised by the applicant as stated above, are not sufficient to grant bail to the applicant. The earlier application was rejected by considering the role played by the applicant in the present case.

7. In view of above, no case is made out for grant of bail. Hence, I pass the following order;

ORDER

Application is rejected.

[P. D. NAIK , J.]