

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

BAIL APPLICATION NO. 2573 OF 2017

Sohail Babu Khan ... Applicant

Vs.

The State of Maharashtra
Through Bangur Nagar Police Station ... Respondent

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Mr. Dinesh Tiwari a/w Mr. Mikhail Dey I/b M/s Dinesh Tiwari & Associates, Advocate for the applicant.

Mrs. M.R. Tidke, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th JULY, 2018.

P.C.

1. This is third application for bail. The applicant was arrested on 9th November, 2015 in connection with C.R. No. 364 of 2015 registered with Bangurnagar Police Station, Mumbai for the offence punishable under Sections 307, 365, 342 read with 34 of Indian Penal Code.

2. The applicant had preferred an application for bail before this Court vide bail application No. 1017 of 2016. The said application was rejected by order dated 15th July, 2016. While rejecting the said application, this Court directed that trial court shall make an endeavour to decide the case within a period of six months from the date of framing of charge. It was further directed that in the event the case could not be disposed of within

stipulated period, the applicant shall be at liberty to move the Court for grant of bail afresh.

3. Learned APP on instructions submits that the charge was framed on 6th August, 2016. Although, the charge was framed, there was no progress in the trial, hence the applicant preferred the Bail Application No. 1147 of 2017 before this Court. This Court by order dated 27th July, 2017 directed the trial Court to complete the trial within a period of three months from the date of said order. Applicant was at liberty to prefer the bail application in the event the trial is not concluded within stipulated period. Since, the trial could not be completed within time the present application was preferred by the applicant in this Court. This Court had directed that the matter be placed before Justice Shri P.N. Deshmukh since the earlier order of rejection on merits was passed by the said Court.

4. After taking the appropriate directions from the learned Acting Chief Justice, registry has assigned the matter to this Court as Justice Shri P.N.Deshmukh is not available to the judicial work at the Principal seat.

5. During the pendency of this application, this Court by order dated 8th March, 2018 directed the trial Court to complete

recording of cross-examination of P.W.No.1 qua present applicant on or before 22nd March, 2018. Thereafter, the cross-examination of said witness is completed. Learned counsel for the applicant submits that from the evidence of complainant, it is apparent that his evidence suffers from several infirmities. It is further submitted that the complainant had sustained minor injuries. He was not even hospitalized for treatment of the said injuries. It is further submitted that the applicant is in custody for a period of about 32 months and considering prolong custody of the applicant, bail application may be granted.

6. Learned APP submitted that application preferred by the applicant was earlier rejected on merits. She further submitted on instructions that prosecution intends to examine near about seven more witnesses. Presently, court is vacant. The evidence of complainant is already completed. It is submitted that there is evidence against the applicant and hence this application may be rejected.

7. Applicant is being prosecuted for an offence punishable under Sections 307, 365 and 342 of Indian Penal Code. The applicant was arrested on 9th November, 2015 and since then the applicant is in custody. Although, the charge was framed on 6th

August, 2016, the evidence of P.W.No.1 had commenced on 14th September, 2017. The same was concluded on 17th March, 2018. It is pertinent to note that while rejecting first application for bail, this Court had directed the trial Court that trial Court shall make an endeavour to complete the trial within a period of six months from the date of framing of charge, however, the trial could not be completed within time as stipulated in the said order. The applicant was permitted to prefer fresh application for bail in the event, the trial is not disposed of. Thereafter, second application was preferred by the applicant which was also disposed of on 27th July, 2017 directing the trial Court to complete the trial within three months. While disposing the said application, it was observed that charge was framed in this case on 6th August, 2016 however no witness was examined by the prosecution. It was also noted that the applicant is in custody since the date of his arrest. Considering the fact that trial was already expedited by this Court and the applicant is in custody since November, 2015, the applicant cannot be incarcerated in custody for long time. It is noted that since the date of arrest, the applicant is in custody, the prosecution has examined only one witness. I have perused the medical certificate of the injury sustained by the complainant. It is

apparent that he had sustained contusion on his body. It also appears that he was not admitted in hospital for treatment. In any case, considering the fact that liberty be granted to the applicant on two occasions to prefer fresh application for bail in the event the trial is not concluded and that he is in custody for a period of 32 months, this application deserves to be allowed. Hence, I pass the following order.

ORDER

- (i) Bail Application No. 2573 of 2017 is allowed.
- (ii) Applicant is directed to be released on bail by executing PR Bond in the sum of Rs.20,000/- (Rs. Twenty Thousand) with one or more sureties in the like amount in connection with Sessions Case No. 95 of 2016 pending in the Court of Sessions at Dindoshi, Mumbai;
- (iii) Applicant is permitted to furnish cash security in the sum of Rs.20,000/- (Rs. Twenty Thousand) in lieu of the surety for a period of four weeks from date of release;
- (iv) Applicant is directed to attend Bangur Nagar Police Station once in a month on first Saturday between 10 to 12 Noon till the disposal of the trial;

- (v) Applicant shall not tamper with witnesses.
- (vi) Application stands disposed off.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.07.30
15:42:56 +0530

(PRAKASH D. NAIK, J.)