

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

CRIMINAL APPLICATION NO. 649 OF 2017

Kailash Shreeram Agarwal

... **Applicant**

V/s.

The State of Maharashtra & Anr.

... **Respondents**

Mr. Aabad Ponda a/w Kiran Jain with Ish Jain with Vinay Kumar with Vinayak Siraskar i/b Kiran Jain and Co. for the Applicant.

Mrs. Rutuja Ambekar APP for the Respondent/State.

Mr. H.S. Venegavkar for the respondent/CBI.

CORAM : A.S.GADKARI, J.

DATE : 21th FEBRUARY, 2018

P.C.:

. This is an application for modification of bail condition imposed upon the Applicant by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai by its Order dated 07.10.2017 in Bail Application No. 44/BA/2017 in R.A. No. 6/RA/2017.

2 Heard the learned Counsel for the Applicant and the learned Counsel for the Respondent No.2. Perused the record.

The record indicates that as the prosecuting agency could not file final report within the stipulated period as contemplated under Section 167(2) of the Cr.P.C., an indefeasible right accrued in favour of Applicant and therefore, the Trial Court was pleased to grant him bail under Section 167(2) of the Cr.P.C. by

the impugned Order. However, has imposed a condition that the Applicant shall deposit 5% of alleged fraud amount in the Court and take note that such security amount is subject to forfeiture in the event of causing intentional delay for trial.

3 It is the settled position of law that once an indefeasible right accrues in favour of an accused person, there can not be any impediment for his release on bail and in such an eventuality, the Court cannot imposed any other condition than the conditions of bail on the accused person. The record indicates that despite the order of bail passed on 07.10.2017, the Applicant is still languishing in jail for non compliance of said condition. The said condition to deposit 5% of alleged fraud amount is a harsh and onerous condition.

4 In view thereof, the said condition of depositing of 5% of alleged fraud amount is hereby waived.

5 It is made clear that, rest of the conditions imposed by the Trial Court are not disturbed and are maintained.

6 Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)