

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

**CRIMINAL APPLICATION NO. 1923 OF 2018
IN
CRIMINAL APPLICATION NO. 1046 OF 2017
IN
CRIMINAL APPEAL NO. 689 OF 2017**

Mohd. Riyaz Bhikhi Khan Mansury
@ Raju @ Chandbabu

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.P. G. Pandey for the Applicant.

Mr. V.B. KondeDeshmukh, Addl. P.P. for the Respondent/State.

**CORAM : R.M.SAVANT, &
N.J.JAMADAR, JJ.**

DATE : 30TH NOVEMBER 2018

PC:

1. The above application has been filed for modification/alteration/deletion of clause (6) in the Order dated 06th August 2018, by which order the Petitioner was granted bail on the conditions mentioned in the said order. The Petitioner has been convicted for the offence punishable under Section 302 for the murder of the employer and her daughter. The Petitioner is incarcerated in Kolhapur Central Prison, Kolhapur and has

presently undergone 9 years of imprisonment. Against the said conviction, the Petitioner had filed the above Criminal Appeal No. 689 of 2017, which is pending in this Court. In the said Criminal Appeal, the Petitioner filed Criminal Application No. 1046 of 2017 for bail. The said application was considered and the Petitioner was granted bail inter alia on the condition mentioned in the Order dated 06th August 2018 amongst which is the condition prescribed by clause (6) reads thus:

“6) The order of sentence shall stand suspended. The Applicant is directed to be released on bail on furnishing his bail bond in the sum of Rs.15000/- with one or more sureties in the like amount.”

2. Hence, in terms of said clause (6), the Petitioner was directed to furnish one or more surety in the like amount i.e. sum of Rs.15,000/-. The above application has been filed as indicated above for modifying/altering or deleting the said condition on the ground that the Petitioner has not been able to comply with the said condition though bail has been granted to him in August 2018. The Petitioner as can be seen from prayer clause of the instant application seeks modification to the extent of he being released on furnishing cash bail in the sum of Rs.15,000/- or

even lowering the said amount. Pertinently in the application, the Petitioner has not stated the efforts that he has made for furnishing sureties as mandated by the said order dated 6th August 2018. It is claimed on behalf of the Petitioner that he is a resident of U.P. and that since he does not have any roots in Mumbai, it is not possible for him to provide sureties. The learned Counsel for the Petitioner placed reliance on the judgment of a learned Single Judge of this Court in Writ Petition No. 584 of 2010 in the matter of ***Sajal Kumar Mitra v/s. State of Maharashtra*** and the order dated 04th May 2018 also passed by a learned Single Judge in B.A. No. 284 of 2018.

3. In so far as the judgment in the Sajal Kumar Mitra is concerned, the learned Single Judge after referring to the Judgment of the Apex Court in ***Hussainara Khatoon and ors. V/s Home Secretary, State of Bihar*** 1980 1 SCC 81 and in ***Moti Ram & Ors. V/s. State of Madhya Pradesh*** 1978 4 SCC 47 held that learned Magistrates wherever possible release the accused on his furnishing cash bail initially, in appropriate cases. The Petitioner in the said case were all officers of a Private Limited Company namely M/s. Mitra S.K. Private Ltd. and it is in the context of the said fact that the principle as above came to be laid down by the

learned Single Judge for guiding the lower Court. In so far as the order in BA No. 248 of 2018 is concerned, the said order concerned an Ex-government functionary and it is in the said circumstances that the cash bail in the sum of Rs.5,00,000/- was ordered to be furnished.

4. Hence, going by the judgment of the learned Single Judge in Sajal Kumar wherein it has been held that in appropriate cases cash bail can be resorted to. In our view, the instant case is not such a case wherein the modality of furnishing cash bail can be resorted to. In our view, if the Petitioner is in a position to furnish cash bail in the sum of Rs.15,000/- then surely he would be in a position to furnish one or two sureties as mandated by the order dated 06th August 2018. We are, therefore, not inclined to modify the condition as we do not want to foresee a situation where the whereabouts of the Petitioner would be difficult to ascertain if he is released on cash bail.
5. The above Application is accordingly rejected.

(N.J.JAMADAR, J.)

(R.M.SAVANT, J.)