

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1732 OF 2017
IN
CRIMINAL APPEAL NO.1066 OF 2015**

Imran Maula Kalawant	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

.....
Ms.Nasreen S.K.Ayubi, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 22nd JANUARY 2018.

P.C. :

1 This is an application for temporary bail for 30 days claimed by the applicant/appellant on the ground of medical treatment of ailing mother, who is 70 years of old. The applicant/appellant is convicted of the offences punishable under Section 376(2) of the Indian Penal Code as well as Section 67 of the Information Technology Act. He is sentenced to suffer rigorous imprisonment for 13 years apart from directing him to pay fine of Rs.20,000/- and in default to under simple imprisonment for one year. On other count, he is sentenced to suffer rigorous imprisonment for three years. Both the substantive sentences are directed to run concurrently.

2 The applicant/appellant, by the instant application, has claimed that his father passed away on 21/09/2015. It is further averred that thereafter mother of the applicant namely Mehrajbi Moula Kalawant is suffering from Chronic P.I.D. L3, L4, L5 and she has been advised to undergo surgery of vertebra as early as possible by Dr.M.V.Phalke of Kolhapur. It is further averred that there is no male member in the family of the applicant/appellant. He has only two sisters out of which one is handicapped. Therefore, the applicant is seeking his release on bail for a period of thirty days by contending that considering his conviction for the offence punishable under Section 376(2) of the Indian Penal Code, he is not entitled for furlough or parole leave.

3 Heard the learned Advocate appearing for the applicant/appellant, who argued in tune of the pleadings in the application and contended that considering medical urgency as well as the fact that the applicant/appellant by now has undergone sentence of more than eight years, he be released on temporary bail.

4 The learned Additional Public Prosecutor tendered report submitted by the Police Inspector, Shivajinagar Police Station, Ichalkaranji dated 21/01/2018 to which several documents are annexed. The report is taken on record and marked as 'Exhibit X' for the purpose of identification. The learned

Additional Public Prosecutor is not disputing the fact that mother of the present applicant is required to undergo surgery of the spine. However, the learned Additional Public Prosecutor opposed the application by contending that the crime in question is serious.

5 I have carefully considered the rival submissions and also perused the copy of deposition of the alleged minor victim of the crime in question as well as the documents annexed to the application and the police report.

6 Father of the present applicant/appellant has passed away on 21/09/2015 as seen from the release Order dated 23/09/2015 (Exhibit 'C'). It is also seen that after expiry of seven days after his release, the applicant has surrendered himself before the jail authority in terms of the death parole leave. It is further seen that the applicant is not entitled for furlough or parole because of his conviction for the offence punishable under Section 376(2) of the Indian Penal Code. The Order dated 07/02/2017 (Exhibit 'E') issued by the D.I.G., Prison, Pune reflects this fact.

7 Police report unerringly points out that Mehrajbi Moula Kalawant – mother of the present applicant is 70 years old and she is advised to undergo spinal surgery. The police report further shows that mother of the present applicant is being taken care of by her two daughters out of which Farida is a handicap

woman. Her another daughter Jasmin is taking her care and there is no male member in the family. The police report is also stating that Yashoda Accident Hospital has advised surgery of spine to mother of the present applicant and she is desirous to undergo the surgery.

8 In this view of the matter, considering the fact that there is no male member in the family to take care of the surgical operation of aged mother of the present applicant as well as the fact that on the earlier occasion at the time of death parole leave the applicant has duly surrendered before the prison authority and that he has already undergone eight years of substantive sentence and as the applicant has no other criminal antecedents, the following Order :

- (i) The application is allowed.
- (ii) For a period of thirty days from his release, the applicant/appellant be released on temporary bail on executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount for medical treatment of his mother.
- (iii) On expiry of thirty days from his release by the prison authority, the applicant/appellant should surrender before the jail authority.

- (iv) During the period of his release on temporary bail, the applicant should not contact the prosecutrix of any of the prosecution witness in any manner.
- (v) During the period of his release on the temporary bail, the applicant to attend the concerned police station on every Sunday between 10.00 a.m. to 11.00 a.m.
- (vi) The application is accordingly disposed of.

(A.M.BADAR J.)