

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

CRIMINAL APPLICATION NO. 168 OF 2019

Mr. Shailesh Narendra Trivedi ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Niranjan S. Mundargi, Advocate I/by Agastya A. Desai for
the Applicant.

Mr. R. M. Pethe, APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 18, 2019.

PC :

1 The Applicant was granted bail by the Additional Sessions Judge, Sessions Court, Vasai at Palghar vide order dated 24.12.2018 passed in bail application no.902 of 2018.

2 The Applicant is arrested in connection with the CR No. I- 541 of 2017, registered with Virar Police Station, for the offence under sections 420, 465, 467, 468, 471 & 474 read with section 34 of the Indian Penal Code and sections 3 and 4 of the MOFA and sections 52, 53, 54 of the MRTP Act.

3 While granting bail, learned Sessions Court had directed that the Applicant shall deposit Rs. 1,03,00,000/- in the court. The order also stipulates other conditions.

4 Learned counsel for the Applicant submitted that the condition to deposit the said amount is onerous and is contrary to the provisions of law and that although the applicant was granted bail by order dated 24.12.2018, he continued to be in the custody as he is not in a position to comply with the condition of depositing the exorbitant amount. Learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of **Sumit Mehta vs. State of N.C.T. of Delhi** dated 13.09.2013 in Criminal Appeal No.1436 of 2013, wherein it was observed by the Apex Court that onerous condition need not be imposed while granting bail or while considering the application for bail. Reliance is also placed on the order passed by this court in criminal application no. 390 of 2017 in case of **Ashwin A. Parmar vs. State of Maharashtra**, wherein onerous condition of deposit was relaxed by this court.

5 Learned APP supported the order passed by the learned Sessions Court. It is submitted that in paragraph 11 of the order dated 24.12.2018, the learned Sessions Court has observed that the applicant had executed registered deed of

conveyance in favour of the purchaser and wrongfully gained the huge amount. Prima facie, the prospective purchaser could not get clear title. Thus to protect the interest of the aggrieved persons, the condition has been imposed by the learned Sessions Court.

6 I have perused the impugned order passed by the learned Sessions Court. The Applicant had preferred an application for setting aside the said condition before the same court, which has been rejected on 16.01.2019.

7 In paragraph 12 of the order dated 24.12.2018, the learned Sessions Judge has observed that the crime is related to the development of agricultural plot by builder and the construction was carried out without permission of the corporation and that the flats were sold. In paragraph 13 of the said order, it is mentioned that investigation is completed. Case is based on the huge documentary evidence and it would take too much time for hearing and in that situation the trial court found it just and proper to enlarge the applicant on bail on deposit of said amount. It is further observed that the simultaneously it was just and proper to direct the applicant to deposit the amount which he has gained wrongfully on the basis of the forged and fabricated documents.

8 The factual matrix of the present matter does indicate that the applicant has not volunteered to deposit the said amount but the condition precedent for being released on bail was imposed by the trial court. In the decision relied upon by the learned counsel for the applicant, it was observed by the Apex court that the applicant therein was directed to give fixed deposit of Rs. One crores for a period of six months in the name of the complainant and to keep the FDR with the investigating officer, as condition precedent for grant of anticipatory bail, is evidently onerous and unreasonable. It was further observed that the court has not come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. It is also observed that the court has not suggested that power to impose a condition of such nature is excluded in the cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.. However, in the present case it is seen that in-spite of bail being granted to the applicant vide order dated 24.12.2018, the applicant has continued to be in custody because of onerous condition of deposit. The applicant is in custody from 08.10.2018. The learned Sessions Judge has observed that the case is based on the documentary evidence, which would take too much time for its hearing.

9 In the circumstances, I pass following order :

ORDER

i. The order dated 24.12.2018 passed by the Additional Sessions Judge- 1, Vasai in Criminal Bail Application No. 902 of 2018 is modified to the extent that Clause -1 of the operative part of the said order, directing the applicant to deposit the amount stands relaxed. Other conditions shall remain intact.

(PRAKASH D. NAIK, J.)

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