

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

**CRIMINAL APPLICATION NO.1301 OF 2018
IN
CRIMINAL APPEAL NO.1155 OF 2015**

Ashok Pundalik Gavade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Umesh R. Mankapure for the applicant.

Mr. H.J. Dedhiya, APP for the State.

...

**CORAM: SMT. SADHANA S. JADHAV, AND
SMT. ANUJA PRABHUDESSAI, JJ.**

**JUDGMENT RESERVED ON : 30th OCTOBER, 2018.
JUDGMENT PRONOUNCED ON : 30th JANUARY, 2019.
(In Chamber)**

JUDGMENT (PER SMT. ANUJA PRABHUDESSAI. J.) :-

. This is the third application filed by the aforesaid Applicant, who has been convicted in Sessions Case No.11/2014 for offence under Section 302 r/w. 34 of the IPC, for suspension of sentence and his release on bail.

2. The applicant was charged with an offence of murder of one Gurunath who was employed as a waiter in a hotel at Chandgad. The

case of the prosecution is that on 05.02.2014 while the deceased was serving the applicant and his friend, some water spilled on the table. The altercation between the applicant and the deceased resulted in a quarrel. It is alleged that the applicant threatened to cause death of Gurunath and some of the persons present in the hotel intervened and took said Gurunath into a room. Later on seeing Gurunath proceeding towards the police station to lodge a complaint, the applicant took a bamboo stick from his car and followed him. It is alleged that the applicant inflicted a blow of bamboo stick on his head resulting in head injury as a result, he was shifted to the hospital but succumbed to the injuries on 08.02.2014.

3. The post mortem report indicates that the deceased had suffered a fracture of right parietal bone extending across right temporal bone and into right side middle cranial fossa. There was laceration of membrane beneath the fractures. Subdural and sub-arachnoid hemorrhage present over left temporo parieto occipital region and basitemporal region.

4. Upon considering the oral evidence as well as the nature of the injuries, the learned Sessions Judge held the applicant guilty of offence

under Section 302 of the IPC. The applicant and the co-accused had filed a Bail Application No.1563/2015. The said bail application was not pressed as far as the applicant is concerned and was dismissed with liberty to file fresh bail application at a later stage. The co-accused was granted bail as prima facie he was not involved in inflicting the fatal injury.

5. The applicant filed a second bail application being Criminal Bail Application No.489/2016. The second bail application was dismissed on merits, by order dated 20/04/2016. The applicant has filed yet another application i.e. the third application seeking suspension of sentence and his release on bail, pending the appeal.

6. Mr. Umesh Mankapure, the learned counsel for the applicant has tried to persuade us to consider the merits of the case. He has urged that there are several contradictions and omissions in the evidence of the first informant. He has tried to assail the veracity of the prosecution case and has questioned the conviction under Section 302 of the IPC when the accusation against the applicant that he had inflicted a single blow without any pre-medication. He submits that the deceased had expired three days after the incident and in the facts

and circumstances, section 302 of the IPC is not attracted. He contends that since these submissions were neither urged nor considered in the previous application, the present application is maintainable. He further contends that considering the large pendency of the appeals before this Court, there is no possibility of the appeal being taken up in near future. He has relied upon the decision of the Apex Court in ***Babu Singh and Ors. v/s. The State of U.P. (AIR 1978 SC 527)***.

7. Mr. H.J. Dhedia, the learned APP submits that the previous bail application having been dismissed on merits, it is not open to the learned counsel for petitioner to make submissions on the facts which were already available. He submits that there is no change in circumstance to entertain the present bail application. He further contends that the offence is of serious nature and hence, the applicant would not be entitled for bail merely because he is in custody since last four years.

8. We have perused the records and considered the arguments advanced by the learned counsel for the respective parties.

9. In the case of Babu Singh (supra), all the accused persons were acquitted by the Sessions Court. The acquittal was reversed by the High Court and they were sentenced to undergo life imprisonment. The reversal of acquittal into conviction was challenged before the Apex Court. While entertaining the second bail application, the Apex Court observed that *"an order refusing an application for bail does not necessarily preclude another on a latter occasion giving more materials, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected it cannot be said that the Court is barred from second consideration at a later stage."*

10. The proposition that subsequent bail application is maintainable on fresh grounds, facts and circumstances that may develop after dismissal of the previous bail application has been reiterated by the Apex Court in ***State of Maharashtra v/s. Buddhikota Subha Rao [AIR 1989 SC 2292]***. The Apex Court has observed that *"once that application is rejected, there is no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial*

one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence".

11. It is thus well settled principle of law that successive bail application can be entertained only when there is substantive change in fact situation or circumstances during the period between the two applications. The embargo on filing repeated bail applications on the same facts is to ensure some degree of finality to the order passed and to maintain judicial discipline and propriety.

12. The present application is not filed on the ground of change in circumstance but bail is sought on grounds, which were already available at the time of filing of the previous bail application. Such application would not be maintainable as it would virtually amount to review of the previous order.

13. It has to be borne in mind that when the Court decides the bail application, it is deemed to have gone through the records and considered all the relevant aspects of the case. Furthermore, the Court deciding the bail application is not required to give elaborate reasons. The only requirement is that the order should be reasoned order.

Hence, the mere fact that some of the grounds which were available were not raised in the previous application or that the said grounds are not reflected in the previous order would not justify entertaining subsequent bail application. Suffice it to say that entertaining repeated prayers for bail on grounds which were already available or allowing another counsel to advance fresh arguments on the same facts would be against judicial discipline and propriety and will encourage abuse of process of law. Hence, we are not inclined to re-consider the merits of the matter.

14. We are also of considered view that the applicant cannot be released on bail solely on the ground of staggering pendency of the appeals and the period of detention undergone by the applicant. Hence, the application is dismissed. However, considering the fact that the applicant is in custody since the year 2014, the hearing of the appeal is expedited. Let the paper book be prepared within two months and thereafter appeal be listed for hearing before the appropriate bench.

(ANUJA PRABHUDESSAI, J.)

(SADHANA S. JADHAV, J.)