

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1676 OF 2018****IN****CRIMINAL APPEAL NO. 30 OF 2017**

Manu @ Mohinder Madhuresh
S/o. Vivekranjan Abrol

.....Applicant

Vs.

The State of Maharashtra

....Respondent.

Mr. Ram Upadhyaya a/w Mr. Dharmesh Singh I/by Law Competere
Consultus for the Applicant.

Mr. J.P. Yagnik, APP for the Respondent-State.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 10th JANUARY, 2019.

P.C.:-

The learned counsel appearing for the Applicant does not dispute that, earlier two Applications made by the Applicant for grant of bail pending the Appeal have been dismissed on merits. Out of the two, one Order was carried to the Apex Court and that the Apex Court has not disturbed the Order. The conviction of the Applicant is for offences punishable under Sections 302 and 376 of the Indian Penal Code. The Criminal Appeal is directed against the said Order.

2 This Application contains a peculiar prayer. The prayer is for enlarging the Applicant on interim bail for 6 months to enable him to sell his flat which is mortgaged with a bank and to enable him to engage a counsel for arguing the Appeal.

3 We may note that, initially under the Order dated 24th October, 2018 passed by the Hon'ble the Chief Justice, this Application was ordered to be placed before the same Bench which rejected the earlier Application for bail filed by the Applicant. After Application was placed before the same Bench, by an Order dated 29th November, 2018 the said Bench observed that, as the bail is not sought on the ground of merits, the Application should be heard by the regular Bench. Accordingly, we have taken up the present Application.

4 The learned counsel appearing for the Applicant relied upon the Order dated 1st July, 2016, passed by the Apex Court in the Case of *Shahjahan Ali & Ors. Vs. State of Maharashtra etc. in Criminal Miscellaneous Petition Nos. 1304-1305 of 2016 in Criminal Appeal Nos. 458-459 of the 2014*. In this case, the Apex Court granted temporary bail to the Applicant for further period of six months to make financial arrangements. His submission is that though the Applicant has given

power of attorney to his mother and though his parents finalized a deal for sale, the same was cancelled by the prospective purchaser after knowing that the Applicant is in jail. He relied upon the documents annexed on page Nos. 7 and 8 of the compilation.

5 We have considered the submissions. According to us, this is nothing but an attempt to secure bail from this Court after earlier Applications were rejected on merits. Admittedly, the Applicant has given a power of attorney to his mother to sell the flat. Therefore, the presence of the Applicant will not be necessary even for registration of the sale document, as the mother is holding his power of attorney. Moreover, the documents on page Nos. 7 and 8 annexed to the compilation, do not show that the earlier transaction was cancelled because the purchaser found that the Applicant is in jail. The said documents show that only a sum of Rs.21,000/- was paid by the prospective purchaser. The constituted attorney has executed a receipt which records that the payment of the amount is subject to search and public notice and that the owner has agreed to allow the purchaser to investigate title through an Advocate. It appears that the transaction did not go through as there is an encumbrance of a bank.

6 As the mother of the Applicant is holding power of attorney to sell the flat, it is not at all necessary to release the Applicant on temporary bail.

7 The other ground is that the Applicant be released on bail with a view to enable him to engage a counsel to argue the Appeal. In fact the Applicant has already engaged a firm of the advocates, which has filed this Application.

8 Hence, there is no merit in the Application and the same is rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)