

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

BAIL APPLICATION NO. 2531 OF 2019

Ganesh Anandrao Deshmukh

....Applicant

Versus

The State of Maharashtra

....Respondent

Mr. I.S. Thakur i/b. Global Juris Consults for the Applicant.

Ms. Pallavi Dabholkar, APP for the State.

Mr. S.V. Khilare, PN 159, Taluka Karad, Dist. Satara present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 07th FEBRUARY, 2020.

(IN CHAMBER)

P.C. :-

. This is the second bail application under Section 439 of Cr.P.C. filed by the aforesaid applicant who is facing trial in Sessions Case No.31/2018 for offences under Sections 302, 323 r/w. 34 of the Indian Penal Code.

2. Heard Mr. I.S. Thakur, learned counsel for the Applicant and Ms. Pallavi Dabholkar, learned APP for the State. I have perused the records.

3. The previous bail application was rejected on merits by order dated 10/10/2018. The challenge to the said order was dismissed by the Apex Court vide order dated 29/01/2019. Mr. I.S. Thakur, the

learned counsel for the Applicant fairly concedes that there is no change in circumstance other than framing of charge. Relying upon the decision of the Apex Court in *Babu Singh and ors. v/s. The State of U.P. (AIR 1978 SC 527)*, he submits that the second bail application can be entertained “on the same material but different consideration”. He submits that the material on record does not prima facie prove the involvement of the applicant in the said crime. He contends that the ground of private defence was not raised in the previous bail application. He submits that this ‘different consideration’ would justify grant of bail. The learned Counsel for the applicant further contends that the applicant is a young boy languishing in jail for more than 18 months.

4. The learned APP has opposed the application mainly on the ground that there is no change in the circumstances, subsequent to the Apex Court Order dated 29.01.2019.

5. I have perused the records and considered the arguments advanced by the learned Counsel for the respective parties.

6. 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.*”

7. 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 vs. 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.”

8. It is thus well settled principle of law that successive bail application can be entertained only when there is a 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.

9. 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 an application would not be maintainable as it would virtually amount to review of the previous order which has been confirmed by the Apex Court.

10. It has to be borne in mind that 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 be reasoned order. Hence, the mere fact that some of the grounds which were available were not raised 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, I am not inclined to reconsider the merits of the matter.

11. Considering the gravity of the offence, the applicant cannot be released on bail solely on the ground that he is languishing in the jail since last more than 18 months.

12. Hence the application stands dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)