

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3211 OF 2019

Dipak Shivaji Gonugade, Age 33 years,
Occ.Driver, R/o.Siddhanerli, Tal.Kagal,
District Kolhapur. (Presently lodged in Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Yuvraj S. Gharal for applicant.

Smt.Veera Shinde, APP, for State.

Mr.R.D.Dabale, API, Kagal Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd January 2020

PC :

1. This is an application for bail in CR No.35 of 2019 registered with Kagal Police Station, District Kolhapur, for offences under Section 420 r/w 34 of Indian Penal Code. The applicant was arrested on 22nd February 2019.

2. The applicant had preferred an application for bail before the Court of learned JMFC, which was allowed vide order dated 7th May 2019. The applicant was directed to be released on bail on furnishing solvent surety of Rs.25,000/- and on condition that the applicant shall not commit similar offence in future and he shall not tamper with prosecution evidence in whatsoever manner and shall attend the dates before the Court.

3. Apparently the applicant had preferred an application for bail before this Court viz Bail Application No.1062 of 2019. During

pendency of the said application, the applicant had sought bail before the Court of learned JMFC. Pursuant to grant of bail by the Trial Court, the applicant had moved this Court for withdrawal of Bail Application No.1062 of 2019, pending before this Court. The said application was disposed of by order dated 23rd July 2019. The Court, however, directed JMFC to verify whether pendency of the application before this Court was brought to the notice of said Court and if it was not so done, learned JMFC was directed to take appropriate steps against applicant in accordance with law.

4. Pursuant to the aforesaid order, learned JMFC vide order dated 5th October 2019 cancelled the bail granted to the applicant on the ground that there was suppression of material fact that bail application was pending before High Court. In view of compliance of order of High Court order the learned Magistrate cancelled the bail and issued non bailable warrant against the applicant.

5. Pursuant to that the applicant preferred an application for cancellation of non-bailable warrant before the Court of JMFC. The said application was rejected and applicant was taken into custody on 15th October 2019. He was remanded to MCR till 24th October 2019. Thereafter the applicant had preferred an application for regular bail before learned JMFC, which was rejected by order dated 15th October 2019. The applicant thereafter preferred application for bail before Sessions Court, which was rejected by order dated 6th November 2019.

6. Learned counsel for applicant submits that inadvertently it was not pointed out to the Trial Court that an application is pending

before this Court. It is submitted that the application for bail was preferred before the Court of JMFC after filing of charge sheet. It is submitted that there was no intention to suppress the fact that the application was pending before this Court. The applicant was in custody for a period of about three months prior to grant of bail by the Court of JMFC. Even after bail is cancelled, the applicant is in custody from 15th October 2019. Investigation is complete and charge sheet is filed. Further detention of the applicant is not necessary.

7. Learned APP submits that there is another case pending against applicant being CR No.31 of 2019. It is confirmed that investigation is complete and there is recovery of 31 vehicles. The case of prosecution is that the complainant was acquainted with the applicant as he was visiting his shop. The accused no.1 Sagar Patil was also visiting the shop of complainant with applicant. It is alleged that the applicant had introduced Sagar Patil to the complainant and represented that he is providing vehicles to companies and arranges payment of rent to the tune of Rs.22,000/- per month. Pursuant to that the complainant and various other persons had provided their vehicles to the co-accused. However, they did not receive the rent as promised by the accused.

8. It is noted that the charge sheet is filed. The applicant is in custody. The co-accused who was instrumental in allegedly providing the vehicles to the companies, was arrested and granted bail. The applicant was also granted bail which was subsequently cancelled by the JMFC. In the circumstances, bail can be granted to the applicant.

9. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3211 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.35 of 2019 registered with Kagal Police Station, District Kolhapur, on furnishing PR bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount;
- (iii) The applicant shall not commit similar offence in future;
- (iv) The applicant shall not tamper with prosecution evidence in whatsoever manner;
- (v) The applicant shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

MST