

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3615 OF 2019
WITH
INTERIM APPLICATION (ST) NO.2006 OF 2020
IN
CRIMINAL BAIL APPLICATION NO.3615 OF 2019**

Chintan Vidyasagar Upadhyay ... Applicant

V/s.

State of Maharashtra ... Respondent

Mr. Raja Thakare, Senior Senior i/b. Mr. Bharat K. Manghani, for the Applicant.

Mr. Anil. G. Lalla for the Intervenor.

Mr. Vaibhav Bagade, Special Public Prosecutor a/w Ms. PP. Shinde, APP for the Respondent - State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 21st DECEMBER 2020.

PC. :

1. The applicant herein is an accused in Crime No.444 of 2015 registered at Kandivali Police Station for the offence punishable under sections 302, 396, 201, 109, 120-B r/w 34 of Indian Penal Code. The applicant herein had filed an application before this Court bearing Criminal Bail Application No.2371 of 2016. After considering the charge sheet in detail and after hearing the learned counsel for the applicant at length, this Court, upon evaluation of the material

collected by the investigating agency, had rejected the application vide order dated 2nd February 2017.

2. The applicant had then subsequently renewed his prayers for being enlarged on bail by filing Bail Application No.2830 of 2017. At that stage, it was demonstrated before this Court that the statements of three witnesses were recorded on 23rd December 2015 but did not find place in the compilation of charge sheet. It was also submitted that the original co-accused No.2 Pradeep Rajbhar had retracted the confession and it was prayed that this Court shall consider the statements of the three witnesses viz. Sanjeev Khandekar, Vaishali Narkar and Arun Gurav. The said statements were in favour of the present applicant. The statements of all the three witnesses were considered by this Court. The contention of the three witnesses and the submission of the counsel was taken into consideration and in view of the observations made in the earlier order, more particularly in paragraph nos.14 to 17 of the order dated 6th August 2018, the application was rejected.

3. Being aggrieved by the said order, the applicant herein had approached the Supreme Court by filing SLP No.179 of 2019. The

Supreme Court had observed on merits as follows :

“Having heard the learned counsel for both the sides, we are of the view that bail needs to be rejected at this stage.”

4. The State had filed a counter affidavit before the Supreme Court and had submitted that the prosecution would conclude the trial within a period of nine months. The Supreme Court, in those circumstances, had observed that,

“if the trial is not so concluded within a period of nine months, it will be open to the petitioner to apply for bail afresh.”

5. In fact, on 14th February 2019, the Special Public Prosecutor was not even appointed when the State had the audacity to submit before the Supreme Court that they would conclude the trial within a period of nine months. The Supreme Court had further directed that the Special Public Prosecutor be appointed within one week from 14th February 2019.

6. The learned counsel Mr. Vaibhav Bagade was appointed as the Special Public Prosecutor on 22nd March 2019. It is admitted that the charge was framed against the accused on 6th May 2019.

7. The applicant had then filed Criminal Bail Application No.3615 of 2019 seeking enlargement on bail pursuant to the liberty granted by the Supreme Court to approach the Court afresh in the eventuality that the trial is not concluded within nine months. This Court, in the order dated 21st February 2020, has observed that the applicant had approached this Court for bail afresh before nine months from the date of framing of charge. On 21st February 2020, the prosecution had examined 7 witnesses. At that stage, the learned APP, upon instructions from the Special Public Prosecutor, had informed this Court that the prosecution will conclude the recording of evidence within six months from 21st February 2020.

8. That, in the first week of March, lock-down was declared by the Central Government and thereafter, unfortunately, due to the outbreak of pandemic situation in view of Covid-19, the functioning of the Courts had almost come at standstill.

9. The daughter of the victim had approached the Supreme Court by filing Misc. Application No.934 of 2020 in SLP No.179 of 2019 seeking extension of time to conclude the trial. The Supreme

Court, by order dated 2nd June 2020, has rejected the application by observing as follows :-

“We find no merit in the Miscellaneous Application, which is accordingly dismissed.”

10. The learned senior counsel for the applicant submits that in view of the fact that the Supreme Court had rejected the application seeking extension of time, it is more than clear that it was expected that the trial ought to have been concluded within nine months and pursuant to the liberty granted by the Supreme Court, the applicant is seeking enlargement on bail.

11. The learned senior counsel on behalf of the applicant submits as follows :-

- (i) That the applicant is in custody since 2016;
- (ii) That after rejection of second bail application, the applicant had approached the Supreme Court. Although the Supreme Court has not interfered with the order of rejection of bail. Supreme Court had directed that the trial be concluded within nine months and in the eventuality, that the trial is not concluded within nine months, the

applicant was granted liberty to approach the High Court to apply for bail afresh. In view of this, the applicant had approached the High Court. However, since it was filed within 7 months, the application was rejected.

12. In fact, this Court had kept the application pending only to see that the trial is proceeding expeditiously as per the orders of the Supreme Court, however, in the meanwhile, the application seeking extension of time is rejected.

13. In the order dated 21st October 2020, this Court had observed that the prosecution has examined 10 witnesses, P.W.11 was in the box but he had tested positive and therefore, trial could not proceed. Similarly, the Special Prosecutor was also reported to have some symptoms of Covid-19 and he was not expected to attend the Court.

14. On 27th November 2020, this Court had been apprised by the learned APP that in the course of recording evidence of P.W.11 it was noticed that the Tempo which was seized in the course of investigation was handed over to one Mr. Ram Adhar Rajbhar, father of

the accused no.1 i.e. Vijay Rajbhar and then Mr. Rajbhar had created third party interest.

15. At that stage, the learned senior counsel for the applicant had submitted that the prosecution has proposed to examine more than 100 witnesses and the same would result into delay in concluding the trial. As of today, this Court has verified from the Special Public Prosecutor Mr. Bagade who submits that the prosecution proposes to examine 48 witnesses excluding 11 witnesses whose evidence is already recorded.

16. The learned counsel for the applicant as well as the learned Special Public Prosecutor have submitted before this Court that in fact, Advocate Mr. Mooman who is representing accused no.1 Vijay Rajbhar seeks adjournment on one or the other ground. It is seen from the records that on few occasions in 2019, the accused nos.1 to 4 were not produced from Thane Jail before the Court and therefore, the matter was being adjourned. On 21st June 2019, the Court had further ordered that the application seeking adjournment would not be entertained as on that day also accused nos.1 to 4 were not produced from Thane Jail. On 11th July 2019, the application was filed for

withdrawing vakalatnama. At present, the accused are attending the trial through video conferencing. The learned Special Public Prosecutor is seeking extension of time to conclude the trial in the change of circumstance i.e. due to outbreak of Covid-19. In any case, application filed by the victim is rejected by the Supreme Court and therefore, the question of considering the application for 'extension of time' does not arise.

17. The learned senior counsel for the applicant submits that in the above-mentioned circumstances, the applicant would be entitled to be enlarged on bail. The learned senior counsel emphasized that the Supreme Court in Criminal Appeal No.742 of 2020 has observed that "Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."

18 This observation may not be applicable in the present case. In the present case, the application seeking enlargement on bail was also rejected by the Supreme Court and, therefore, it would not be

appropriate for this Court to consider a subsequent application seeking enlargement on bail. It is seen from the records that on 2nd February 2017 while deciding Criminal Bail Application No.2371 of 2016, this Court had considered the merits of the matter and had rejected the application seeking enlargement on bail. The Supreme Court has rejected the prayer seeking enlargement on bail on merits of the case and after perusing the order passed by this Court it was not held fit to interfere with the said order.

19. In the present case, this Court had specifically observed that there is incriminating material against the applicant and therefore, bail was rejected on merits. The case of the applicant cannot be separated from original accused nos.1, 2 and 3. It is reported that accused Vidyadhar Rajbhar is still absconding and he is one of the perpetrators of crime. That the prosecution has examined 11 witnesses and the delay is mainly on account of the adjournments being sought by the Advocate representing accused no.1. Upon inquiry, it is reported that Advocate Mr. Mooman is present in the Court premises, however, he is not willing to proceed with the cross-examination of the witnesses and he indulges into lengthy cross-examination as a matter

of his right to defend the accused in a fair manner. However, a duty is cast upon the Court to curtail lengthy cross-examination and restrict the defence counsel to subject any witness to cross-examination to the point and mainly on the basis of the material collected in the course of investigation and his evidence in the examination-in-chief. The learned Sessions Court i.e. Court No.13 shall not grant any adjournment to either side in view of the fact that the Supreme Court has expedited the trial. With these observations, the Bail Application No.3615 of 2019 stands rejected.

20. The applicant had also filed Interim Application No.2006 of 2020 seeking emergency bail on the ground of the pandemic situation, however, in October 2020, the said application was withdrawn. Interim Application No.2006 of 2020 was filed. The said application was not pressed since the main application seeking enlargement on bail on the ground of delay in trial was pending before this Court. In view of rejection of the main application, nothing survives in Interim Application No.2006 of 2020 and the same is accordingly rejected.

21. The Sessions Court seized with Sessions Case No.136 of 2016 is hereby directed to conclude the recording of evidence of

witnesses, in any case, on or before 30th April 2021.

(SMT. SADHANA S. JADHAV, J)

Pallavi M.
Wargaonkar
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signed by
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