

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

CRIMINAL BAIL APPLICATION NO. 1290 OF 2020

Divya Ashok Pahuja ... Applicant

Versus

The State of Maharashtra ... Respondent

.....

Ms. Sana Raees Khan, Advocate for the Applicant.

Mr. Amin Solkar, Special P. P. a/w Mr. A. R. Kapadnis, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 24th FEBRUARY, 2021

PER COURT:

1. The applicant is seeking bail in C.R. No. 92 of 2016 registered with MIDC Police Station, Mumbai which was subsequently investigated by Crime Branch SIT vide C.R. No. 12 of 2016. The applicant was arrested on 14th July, 2016. The offences were registered under Sections 302, 193, 182, 201 r/w Section 34 of Indian Penal Code (for short “IPC”).

2. The case of the prosecution is that the accused were involved in fake encounter of deceased Sandeep Gadoli. The applicant was part of conspiracy and allegedly involved in providing the information about the deceased. She was accompanying the

deceased at the time of incident in question.

3. The applicants had preferred applications for bail before the Court of Sessions which was rejected by order dated 30th March, 2017 and 22nd February, 2018. The applicant then preferred application for bail before this Court viz. Criminal Bail Application No. 1714 of 2018 along with co-accused Sonia Pahuja (Mother of applicant) which has been rejected on merits by assigning detailed reasons vide order dated 8th February, 2019.

3. Learned counsel for the applicant submitted that the applicant is in custody from 14th July, 2016. Trial has not commenced. Jitendra Yadav and Deepakkumar Kakran (accused No.3 and accused No.6) were granted bail by this Court vide order dated 14th November, 2017. The mother of applicant Sonia Pahuja has been granted bail by the Sessions Court on the ground that she was ailing and more prone to get infected, if she is detained in jail which are already over crowded. She was granted interim bail vide order dated 13th October, 2020. The case is based on circumstantial evidence.

4. The applicant further contends that, she was under illegal detention from 7th February, 2016 to 22nd February, 2016. She was subsequently arrested on 14th July, 2016. She was not produced before the Magistrate within 24 hours of her arrest which amounts to

violation of her constitutional rights. The applicant filed application in the Sessions Court seeking record of Station Diary, Lockup Register, Police Diary, General Diary etc. of MIDC Police Station for a period from 7th February, 2016 to 22nd February, 2016. The Sessions Court allowed the said application by order dated 6th October, 2020, directing the prosecution to provide the General Diary/Station Diary, C.C.T.V. footage and Lockup Register for the said period. The order dated 6th October, 2020 has been annexed to this application. It is contented that, despite order dated 6th October, 2020, the prosecution did not comply the said order and filed report Exhibit-195, on 8th October, 2016, stating that they have filed relevant entries of station from 7th February, 2016 to 15th February, 2016. They did not file C.C.T.V. footage or Lock up Register. The learned Sessions Judge directed them to comply order dated 8th October, 2020. On 13th October, 2020 the applicant was provided with Station Diary, however, C.C.T.V. footage or Lockup Register was not produced. The prosecution filed reply dated 13th October, 2020. It is submitted that, on perusal of the entries in Station Diary, it is clear that the applicant was illegally detained. The relevant portions are reproduced in the application. It is submitted that the Diary dated 9th February, 2016 mentions recording of statement of the applicant. Diary dated 12th February, 2016 mentions that the Women Police Constable along

with applicant returned at 4.30 a.m. to the Crime Branch. Entry dated 12th February, 2016 also indicate that the applicant has returned at 8.25 p.m. after recording statement under Section 164 of Cr.P.C. It is submitted that after keeping applicant under illegal detention for two weeks they did not find any evidence against the applicant and after about 5 months the applicant was impleaded as accused in the present case. In some entries, wrong batch numbers of Women Police Constables were mentioned. The applicant and other witnesses were taken to Esplanade Court. The applicant and another witness returned to the Police Station. On 20th February, 2016, the applicant was taken to spot of the incident with photographer. Subsequently, they returned to the Police Station with applicant. Station Diary entry dated 20th February, 2016 at 6.45 p.m. exit entry of the applicant and the applicant was released at 6.45 p.m. She was summoned to come on 24th February, 2016. There are no entries of summons sent to the applicant earlier for investigation. There are no entries of WPC on 6th, 21st 22nd and 23rd February, 2016 which establishes that they were deployed from outside the Police Station to see that the applicant is under detention. The WPC were present day and night in the Crime Branch though there was no lockup at the at the Crime Branch. The applicant was detained to falsely implicate in the case.

5. It is submitted that the applicant is suffering from Appendicitis and depression. She had filed application for medical report. The Superintendent of Jail, was directed to produce the medical report. The applicant is languishing in Jail for long period of time. Hence, bail may be granted to the applicant.

6. Learned APP submitted that the previous application was rejected by this Court by assigning detailed reasons. There is no change in circumstance. There is sufficient evidence against the applicant to show her involvement in the crime. The applicant was not illegally detained at any point of time. The applicant was arrested on 14th July, 2016. After a period of about 4 years, for the first time the applicant has contended that she was under illegal detention. The detention of the applicant is based on disputed question of fact. The Station Diary entries does not indicate that she was illegally detained. The contention of the applicant cannot be accepted at this stage. The applicant was arrested. She was produced before the Court. She was remanded to custody. The applicant is in custody on the basis of order of the Court. On completing investigation, charge-sheet has been filed against the applicant.

7. The previous application of the applicant was rejected by this Court on merits. Lengthy arguments were advanced while

adjudicating the said application. This Court has analyzed the documents on record and by assigning the reasons, the said application was rejected on merits. The circumstances showing involvement of the applicant the co-accused were summarized in Paragraph 20 of the order dated 8th February, 2019 passed by this Court while rejecting the application for bail. The merits cannot be reviewed again.

8. The applicant has contended that she was under illegal detention from 7th February, 2016 to 22nd February, 2016. The issue has been raised for first time after a period of four years. Apparently the applicant had applied for certain documents before the trial Court. The learned Sessions Judge had directed the respondent to furnish the documents. The prosecution has filed reply indicating reasons for not furnishing document except Station Diary entries, which were furnished to the applicant. I have perused Station Diary entries. The Station Diary Entries does indicates the presence of the applicant at the Police Station and with the Investigating Machinery. It also refers to recording of statement. It is pertinent to note that the applicant has been referred to as the witness. It is apparent that during the course of investigation the complicity of the applicant was revealed and hence subsequently she was arrested on 14th July, 2016.

From the Station Diary entries it cannot be inferred that the applicant was illegally detained in custody of Police during the period from 7th February, 2016 to 22nd February, 2016. Hence, contention of the applicant cannot be accepted. The applicant was than arrested. She was produced for remand. She is in custody, though orders passed by Court. Charge-sheet is filed. Court has taken cognizance. Learned counsel for the applicant relied upon the compilation relying to several decisions of the Apex Court and the High Court in support of her submission which are as follows :-

1. Desh Raj V/s. Central Bureau of Investigation.
2. State of Kerala V/s. Raneef.
3. Sagar Tatyaram Gorkhe & Anr. V/s. State of Maharashtra.
4. Gautam Seth V/s. State of H.P.
5. Dipak Subhashchandra Mehta Vs. C.B.I. & Ors.
6. Suaibo Ibow Casamma V/s. Union of India.
7. Joginder Kumar V/s. State of U.P. & Ors.
8. Kishor S/o Laxmanare Futane V/s. State of Maharashtra and Ors.
9. Madhu Limaye & Ors.
10. Union of India Vs. K. A. Najeeb.

9. The decisions were delivered in the facts of those cases.

The same are not applicable in the present case.

10. The other contention of the applicant is that the trial has not commenced. The applicant is in custody from 14th July, 2016. It is expected that the trial Court would give priority to this Case, considering that the applicant is under incarceration from the date of arrest, the trial Court shall proceed with the case expeditiously. The applicant has also contented that bail may be granted on medical ground. It appears that the applicant had preferred application before the Trial Court seeking medical papers from jail. The applicant is at liberty to prefer such application on medical ground before the Sessions Court.

11. In view of the above, no case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Bail Application Nos.1290 of 2020 is rejected;
- (ii) The applicant is at liberty to prefer application for bail on medical ground before Sessions Court.

(PRAKASH D. NAIK, J.)