

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO. 917 OF 2022
IN
CRIMINAL APPEAL NO.460 OF 2014
(DISPOSED OF)

DATTA KESHAV KARALE C.NO.7752
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Appellant : Mr. Avishkar Shelke (appointed)
APP for Respondent-State: Mr. M.M. Nerlikar
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 8th MARCH, 2022**

PER COURT:-

1. Heard.
2. We have received the communication from the applicant-accused Datta Keshavrao Karhale through jail. By judgment and order dated 16.11.2021 this court (Coram: V.K. Jadhav and Sandipkumar C. More, JJ.) has acquitted the applicant of all the charges levelled against him. However, in terms of the provisions of Section 437A of Cr.P.C. we have further directed him to execute P.B. of Rs.20,000/- with one surety of the like amount to appear before the higher court as and when the notice issued in respect of any appeal or petition filed against the judgment of this Court.
3. Now it is communicated by the said applicant-accused Datta

Keshavrao Karhale, who is still in jail despite passing of the judgment and order of acquittal, as above, that due to his poor financial condition and that there is no any relative to stand as surety for him he could not execute the surety bond of Rs.20,000/-. He has further shown ready and willingness to furnish the cash surety instead of surety bond and accordingly sought relaxation of the said condition.

4. We have heard learned counsel Mr. Shelke for the applicant-accused and learned A.P.P. Mr. Nerlikar at length.

5. Learned A.P.P. Mr. Nerlikar has brought to our notice the view expressed by the Division Bench of this Court in the case of State of Maharashtra vs. Bapu Pandu Mali, reported in 2009 (3) Bom.C.R. (Cri.) 528. The said view is also followed in the case of Farooq Abdul Gani Surve vs. State of Maharashtra, reported in 2012 (3) Bom.C.R. (Cri.) 85.

Learned A.P.P. has also brought to our notice the judgment of Full Bench of this Court in the case of Balkrishna Mahadev Lad vs. State of Maharashtra, reported in 2012 (4) Bom.C.R. (Cri.) 300, wherein following two questions came to be formulated for consideration of the Full Bench :-

“(a) When in an appeal against acquitted an action of issuing warrant for arresting the accused is directed in accordance with

Section 390 of the Code of Criminal Procedure, 1973, whether the Accused is entitled to bail as a matter of right and whether the learned Sessions Judge before whom the Accused is brought has no power to direct that the Accused shall be committed to prison till disposal of the Appeal?

(b) Whether the Court has power to direct that every breach committed by Sessions Judge of the direction issued by this Court will always constitute contempt of this Court?"

6. In para 13 and 14 of the judgment, the Full Bench has made following observations and answered questions.

"13. We are of the considered opinion that Section 390 of the Code cannot be read to mean that the Sessions Judge, on production of the accused, has no option but to immediately release him on bail. Instead, we hold that the subordinate Court before whom the accused is produced pursuant to warrant issued in terms of order of the High Court, must exercise his judicial discretion on case to case basis and in particular keeping in mind the order of the High Court, passed in the pending appeal against acquittal in that regard. This would presuppose that the Sessions Judge, in appropriate case, can commit the accused to prison till the disposal of the appeal. Indeed, in that case, it will be open to the accused to question that decision of the Sessions Judge, before the High Court, in which proceedings, the High Court may consider the claim of the accused for grant of bail. Thus understood, grant of bail by the subordinate Court is not a matter of right.

14. As regards the decision of another Division Bench in the case of Farooq Surve (supra), it has essentially followed the earlier decision of the Division Bench in the case of Bapu

Pandu Mali (supra). For the reasons already recorded, while considering the efficacy of the exposition in the case of Bapu Pandu Mali (supra), the same would apply pro prio vigore to the later decision. In the later case, the accused was acquitted of the criminal case, The state preferred appeal against acquittal. As the accused was not found at his earlier address, a non bailable warrant was issued against him by the High Court. The accused, on learning about the issuance of non bailable warrant, moved application before the High Court for recalling the said order and to grant him bail, pending the hearing and final disposal of the appeal. The order issuing non bailable warrant, against the accused, was set aside and the accused was ordered to be released on bail, on executing Personal Bond in the sum of Rs. 5,000/-, before the Trial Court. The Court, however, proceeded to examine the general grievance made by the Counsel for the Petitioner about the injustice caused in some cases because of the arrest of accused inspite of acquittal and continue to languish in jail. On that submission, the Court proceeded to issue directions to the subordinate Courts to ensure that the accused, who are acquitted by the Trial Court, should not continue to languish in jail as it results in violation of Article 21 of the Constitution of India. As aforesaid, the Constitution Bench of the Apex Court, in Poosu (supra) has held that detention of the accused on account of order of the Court directing his arrest in no way offends his right guaranteed under Article 21 of the Constitution."

7. It appears that though the Full Bench has not particularly dealt with the provisions of Section 437A of Cr.P.C., in para 18 reference has been given to the provisions of Section 437A of Cr.P.C. In para 20 while dealing with the provisions of Section 390 of Cr.P.C. the Full Bench has made following observations:-

“20. Accordingly, we hold that the accused is not entitled to bail as a matter of right merely because he has been acquitted. Further, the subordinate Court, before whom the accused is produced, has judicial discretion to direct the accused to be committed to prison or to admit him to bail keeping in mind the order of the High Court, pending disposal of the appeal. Indeed, that judicial discretion has to be exercised in consonance with the settled parameters.”

8. In the instant case, the applicant-accused has brought to our notice, rather peculiar circumstances, wherein due to financial poor condition he is not in a position to comply with the order passed by this Court in terms of provisions of Section 437A of Cr.P.C. Learned A.P.P. Mr. Nerlikar and learned counsel Mr. Shelke have brought to our notice that public interest litigation and writ petitions have been filed against the validity of provisions of Section 437A of Cr.P.C. in Delhi High Court, Bombay High Court and Allahabad High Court, which are currently pending before those Courts. Further, in terms of Code of Criminal Procedure (Amendment) Bill 2017 the substantive change in Section 437A has been recommended wherein Section 437A is proposed to be substituted in the following manner:-

20. Substitution of new section for section 437A.- For section 437A of the Code of Criminal Procedure, the following section shall be substituted, namely:-

“437A. Personal bond to require accused person to appear before next appellate court.-

(1) Where the person accused of an offence is acquitted by the trial court or the appellate court as the case may be, the person so acquitted shall execute a personal bond for appearance before the higher court, if so required, which shall remain in force for a period of one hundred and eighty days from the date of the judgment.

(2) If such person fails to appear, the personal bond stand forfeited and the procedure under section 446 shall apply.”

9. In view of above submissions, while dealing with the communication sent by the applicant-accused, we cannot authoritatively say something on this issue. However, considering the plight of the applicant-accused that despite we have acquitted him of all the charges levelled against him, he is still languishing in jail for more than three months for want of compliance of directions in terms of provisions of Section 437-A of Cr.P.C. In view of the above, we proceed to pass the following order:-

O R D E R

- a) The applicant-accused Datta Keshavrao Karhale shall be released on his executing personal bond of Rs.20,000/- (Rupees Twenty thousand) forthwith.
- b) The applicant-accused Datta Keshavrao Karhale shall furnish surety of the like amount within one month after

his release from jail that he would appear before the higher court in terms of provisions of Section 437A of Cr.P.C. as directed in clause (IV) of operative part of judgment and order dated 16.11.2021 passed by this Court in criminal appeal No. 460 of 2014.

- c) In case the applicant-accused Datta Keshavrao Karhale is not in a position to furnish the surety, as directed, he may furnish the cash security of Rs.20,000/- (Rupees Twenty thousand) in the alternate.
- d) With the above observations and directions criminal application is disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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