

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 BAIL APPLICATION NO.855 OF 2023

SHANKAR RAMJI KOPURWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondent-State : Mr. Y. G. Gujrathi.
...

CORAM : S. G. MEHARE, J.
DATE : 19.06.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. Learned counsel for the applicant has a serious grievance against the impugned order that the learned Additional Sessions Judge, Majalgaon did not consider the application on merit. He has pointed out that the learned Additional Sessions Judge has incorrectly observed in paragraph No.6 that though the earlier bail application of the present applicant was decided before filing of the charge sheet, this is a second bail application. He also pointed out that the incorrect observations have been recorded in paragraph No.8 of its order that as such no change-in-circumstances have been taken place after the

earlier bail application of the accused was rejected as above, except the fact that now the charge sheet is filed. However, after due investigation and after having sufficient material, the charge sheet has come to be filed and hence, the accused cannot take help of the fact that now the charge sheet is filed. He would further argue that the learned Additional Sessions Judge, Majalgaon has misunderstood the law that filing of the charge sheet is no change-in-circumstance.

3. The Bombay High Court in the case of ***Laxman Irappa Hatti and another Vs. The State of Maharashtra ; 2004 Cri.L.J. 3802*** has elaborately discussed on the point of change-in-circumstances in paragraph No.9, which reads thus :

“9. The powers conferred upon the Sessions Judge or the High Court under Section 439 of Cr.PC. are wide enough to grant bail. There is no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 439 and that the only principle which was established was that the discretion should be exercised judiciously. The dominant criteria is whether there is any change of circumstance and the change should be substantial and not merely cosmetic. Under Section 207 of Cr.PC., an accused gets documents relied upon by the prosecution as of right. He is thus better equipped to address the Court and invite the Court to examine the evidence after filing of the charge sheet from his point of view and to point out lacunas, if any, in the investigation, which could be

fatal to the prosecution or sufficient enough to convince the Court that there exists reasonable grounds for, prima facie, believing that the applicant has not been guilty of an offence punishable with death or imprisonment for life. Until filing of the charge sheet one of the important fact that weigh on the mind of a Judge is the continuity of investigation and whether the investigation will be hampered if the accused is set at large. However, after filing of the charge sheet, this approach changes and the Court, apart from merits of the case, requires to consider whether the accused should be continued in custody even after the investigation is over. This change, in the approach of the Court after filing of the charge sheet towards evaluating the need of keeping the accused in custody, should be termed as substantial change. It is open for the Court to take similar view which was taken while rejecting earlier application for bail made before filing of the charge sheet. However, in my opinion, it is not open for the Court to hold that filing of the charge sheet is not a substantive change of circumstance and refuse to enter into merits of the case. The Court is obliged to consider merits of the case afresh by allowing the applicant or his advocate to argue an application for bail on the basis of documents supplied to the accused with the charge sheet as required under Section 207 of Cr.PC.”

4. In view of the above cited case, there appears substance in the submission of the learned counsel for the applicant. The application was not decided on merit after filing of the charge sheet being change-in-circumstances. The order rejecting the bail is apparently against the law settled on change-in-

circumstances. Hence, instead of deciding the matter here on merit, the order of learned Additional Sessions Judge, Majalgaon passed in Sessions Case No.29 of 2023, below Exh.5, dated 18.04.2023 is held illegal. The submissions of the applicant were not considered on merit after filing of the charge sheet. Hence, under the supervisory powers of this Court, to correct the Judge, the matter is remitted back for deciding the application afresh considering the material referred to him by the applicant from the charge sheet.

5. The application shall be decided within three (3) days from the receipt of this order.

6. Learned Additional Sessions Judge, Majalgaon is directed to issue notice to the respective parties accordingly.

7. In view of the above terms, the bail application stands disposed of.

(S. G. MEHARE, J.)

...

vmk/-