

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

CRIMINAL BAIL APPLICATION NO.543 OF 2023

Imdad Ismail Mujawar

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr. Santosh Deshpande Advocate for Applicant.
- Mr. N. B. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th APRIL, 2023

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.58/2015, dated 26/08/2015, registered with Poynad Police Station, Raigad. Initially, the offence was registered under sections 394 of the Indian Penal Code and u/s 3(1) r/w 25 of the Indian Arms Act. Subsequently, he was charged with offence punishable u/s 395, 397, 347, 412 of the Indian Penal Code and u/s 3 (1) r/w 25 of the Indian Arms Act and u/s 3(1)(ii), 3(2), 3(4) of MCOCA.

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2. Heard Mr. Santosh Deshpande, learned counsel for the Applicant and Mr. N. B. Patil, learned APP for the State.
3. The Applicant was arrested on 20/09/2015 and since then he is in custody. The trial has started and so far 20 witnesses are examined. This is the third time that the Applicant has approached this Court for his release on bail. On the first occasion his Criminal Bail Application No.470 of 2019 was allowed to be withdrawn on 06/09/2019. The trial was expedited. Thereafter he again approached this Court vide Criminal Bail Application No.2177 of 2021. It was decided on 27/04/2022. The application was allowed to be withdrawn unconditionally. However, the trial was directed to conclude within 9 months from 27/04/2022. Specific liberty was granted to the Applicant to approach this Court again for his release on bail if the trial was not concluded within 9 months from that day. 9 months have passed since 27/04/2022. The trial has still not concluded and therefore pursuant to the liberty granted earlier, this application is filed.

4. Learned counsel for the Applicant submitted that the Applicant is in custody for a long time. A co-accused who was similarly situated i.e. Karan Vishwakarma was granted bail by another Bench of this Court on 08/03/2022, vide order passed in Criminal Bail Application No.1591 of 2020. That Applicant was also an accused at whose instance golden ornaments worth more than Rs.13 lakhs were recovered. In the present case the only circumstance against the present Applicant is of recovery of ornaments worth Rs.3,03,324/- from behind his house. He therefore submitted that there is no difference between the case of the co-accused who is granted bail and the present Applicant and therefore on parity also he deserves to be released on bail.
5. Learned APP opposed this application. But he conceded that the Applicant is in custody for a long time and the trial is still in progress. He further submitted that it is not sure as to when the trial would conclude. His only serious submission was that there were about 12 other offences against the present Applicant.

6. I have considered these submissions. The case pertains to the incident dated 26/08/2015 when the offenders entered the shop of the first informant Manoj Jain. He was having a jewellery shop. The offenders were holding choppers and revolver. One of the accused was caught by the informant and others in the shop itself. The other three escaped with ornaments. It is an admitted position that the Applicant was not identified in any test identification parade by any of the witnesses who were present in the shop. The only circumstance against him was recovery of the ornaments. This circumstance is similar to the accused who is granted bail as mentioned earlier. Therefore, the ground of parity applies to the Applicant. He was granted liberty to approach this Court again for his release on bail though in the past he was unsuccessful in getting an order of his release on bail. Though there are antecedents against him, the important feature in his favour is that the trial is not likely to conclude within a reasonable time in future. He is in custody since 28/09/2015. Therefore, the Applicant deserves to be released on bail.

7. Hence, the following order :

ORDER

- (i) In connection with C.R.No.58/2015, dated 26/08/2015, registered with Poynad Police Station, Raigad, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)