

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 1316 OF 2020**

Aslam Shabbir Sheikh @ Bunty Jagirdar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Ashok Mundargi, Senior Advocate a/w. Mr.Niranjan Mundargi i/b.

Mr.Veerdhawal Deshmukh for Applicant.

Mrs.M.H. Mhatre, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 10th January 2023.

PC. :

1. This is an application for bail by the Applicant in CR No. 09 of 2012 investigated by A.T.S. Police Mumbai (Original CR No. 168 of 2012 registered with Deccan Police Station, Pune) under Sections 307, 435 and 120B of Indian Penal Code (for short, "I.P.C.") read with Sections 3, 4 and 5 of the Explosive Substances Act read with Sections 3 and 25 of the Arms Act and under Sections 16(1)(b), 18, 20, 23, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 as amended in 2008 and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

2. Heard Mr.Mundargi, learned senior counsel for Applicant and Smt.Mhatre, learned A.P.P. for Respondent-State. Perused entire record

produced before me.

3. Applicant was granted bail under Section 439 of Criminal Procedure Code (for short, "Cr.P.C.") by the Co-ordinate Bench of this Court by its Judgment and Order dated 1st October 2015 passed in Criminal Bail Application No. 1719 of 2013 on certain terms and conditions. After he was released from jail, the Applicant did not adhere to the terms and conditions prescribed by the said bail Order *inter-alia* did not attend A.T.S. Kalachowki Police Station as stipulated in sub-section (ii) of Operative part of said Judgment and Order. It was also alleged that, the Applicant committed five crimes bearing CR Nos. 126 of 2016; 128 of 2016; 129 of 2019 and 130 of 2016 dated 9th May 2016 and CR No.160 of 2017 dated 24th June 2017 registered with Shrirampur Police Station, District Ahmednagar.

The Respondent-State therefore filed an application under Section 439 (2) of Cr.P.C. for cancellation of bail of the Applicant for violation of conditions of bail and for his indictment in the crimes recorded above while was on bail. This Court by its Order dated 18th April 2019 cancelled the bail granted to the Applicant. The said Order was challenged by the Applicant before the Hon'ble Supreme Court by way of Petition for Special Leave to Appeal (Crl.) No. 4501 of 2019. The Hon'ble Supreme Court by its Order dated 10th May 2019 was pleased to dismiss the said Special Leave Petition. Petitioner thereafter surrendered to A.T.S. Kalachowki Police Station on 15th

May 2019.

4. Mr.Mundargi submitted that, out of the aforementioned five crimes registered against the Applicant, he has been acquitted by the Trial Court in Crime Nos. 128 of 2016; 129 of 2016 and 160 of 2017 by its Judgment and Orders dated 17th February 2021, 20th February 2021 and 26th August 2020 respectively. That, as of today the trials arising out of CR Nos.126 of 2016 and 130 of 2016 are only pending for final adjudication by the Trial Court. That, the Applicant was arrested in the present crime on 13th January 2013 and was released on bail on 1st October 2015 by this Court. That, the Applicant thus had undergone more than two and half years of incarceration till his actual release from jail on regular bail. That, after being unsuccessful before the Hon'ble Supreme Court, he surrendered to the Respondent on 15th May 2019 and till date he has undergone about three and half years of further incarceration. That, the Applicant has suffered for the alleged crimes registered against him in the last three and half years. That, taking into consideration the fact that, the Applicant till today has undergone approximately six years of incarceration at pre-trial stage. He therefore prayed that, this application may be sympathetically considered and allowed.

5. Per contra, Mrs.Mhatre, learned A.P.P vehemently opposed the application and submitted that, even as of today the trials arising out of CR No. 126 of 2016 and 130 of 2016 registered with Shrirampur Police Station

are pending for final adjudication. That, if the Applicant is now released on bail, he may not be available for the trial of the said cases. She on instructions submitted that, if the Applicant is now released on bail, there is every possibility that the Applicant may again indulge into commission of fresh crimes. That, in the case of co-accused namely Mr.Munib Memon, this Court while dismissing his Criminal Appeal No. 299 of 2022 has directed the Trial Court to expedite the trial of the present case arising out of CR No. 09 of 2012 registered with A.T.S. Kalachowki Police Station, Mumbai and to conclude it in any event by December 2023. She therefore submitted that, if the Applicant is now released on bail, he may also abscond to avoid facing the trial in the present case. She therefore prayed that, the present application may be dismissed.

6. The aforementioned facts in para No.3 are culled out from the record placed before me and repetition of the same is avoided for the sake of brevity. It is an admitted fact on record that, the Applicant has been acquitted by the Trial Court from CR Nos.128 of 2016; 129 of 2016 and 160 of 2017. That, the Applicant is behind bars for more than three and half years from the date of his surrender, after cancellation of his bail by this Court. It is necessary to be noted here that, the Applicant was granted bail by this Court by its Judgment and Order dated 1st October 2015 on merits and his bail was cancelled for breach of conditions imposed upon him, as contemplated under Section 439

(2) of Cr.P.C.. The Applicant as of today has undergone approximately six years of imprisonment as an undertrial prisoner and according to me his further pre-trial incarceration is not necessary.

7. In view thereof, I am inclined to release the Applicant on bail and accordingly released on bail pending trial of CR No. 09 of 2012 registered with A.T.S. Kalachowki Police Station, Mumbai, on the same terms and conditions as were imposed by Judgment and Order dated 1st October 2015 in Criminal Bail Application No. 1719 of 2013 passed by the Co-ordinate Bench.

8. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]

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