

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2325 OF 2023****IN****CRIMINAL APPEAL ST NO. 11628 OF 2023**

Dilshad Mahebob Tamboli and anr .. Applicants

Versus

The State of Maharashtra .. Respondent

WITH**INTERIM APPLICATION NO. 2326 OF 2023****IN****CRIMINAL APPEAL ST NO. 11632 OF 2023**

Rashid Kasim @ Kashid Tamboli and anr .. Applicants

Versus

The State of Maharashtra .. Respondent

...

Mr. Gaurav Parkar for the applicants in both the applications.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: BHARATI DANGRE, J.**DATED : 16th OCTOBER, 2023****P.C:-****IA NO.2325/2023 and IA 2326/2023.**

1 In the two Appeals filed u/s.14A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, two applications are taken out for condoning the delay of five years and 14 days in presenting the Appeals.

It is contended in the applications that the applicants had preferred applications for Anticipatory Bail before the Sessions Judge, which came to be rejected as early as in 2018 and even an Appeal was preferred which came to be rejected by the High Court.

2 Once again, the Appeals are filed securing protection from arrest in the wake of release of the prime accused Sarika Kale by the Apex Court and also the release of co-accused Altaf Tamboli, Anna Saheb Dadhe, Laxman Gawli, Balaji Devkar and Rafiq Atar as well as Jayshri Kale and Reshma Kale. It is specifically contended that the appellants were never apprehended.

For this reason, it is prayed that the delay in filing the Appeal deserve to be condoned.

3 Heard learned counsel for the applicants.

Since the delay which is sought to be condoned, technically speaking is the cause for moving the applications for Anticipatory Bail by claiming parity, but since it has to come in form of an Appeal u/s.14A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, I deem it appropriate to condone the delay in both the applications, as the release of the co-accused on bail is a ground for renewing the request by the applicants. Hence, IA No. 2325/2023 and 2326/2023 are allowed.

4 At the outset, learned counsel for the appellants make a statement that since the appellant no.2 in Appeal St No.11628/2023 and appellants in Appeal St. 11632/2023 are arrested, the present Appeals which seek protection from arrest has been rendered infructuous and he would like to press the Appeal for appellant no.1 in Appeal St. No.11628/2023.

5 The appellants in both appeals face accusation in C.R.No. 225/2015 registered with Sadarbazar police station at Solapur which has resulted invocation of Sections 467, 468, 471, along with Sections 3(2)(5) of the The Scheduled Castes and the Scheduled Tribes (Prevention of *Atrocities*) Act, 1989.

6 The counsel for the appellant would submit that at the instance of one Manisha Shinde, the subject C.R came to be registered alleging that the employees along with the family members committed misappropriation of scholarship money to be allotted to backward class students which was dependent upon several criteria. It is alleged that the main accused Sarita Kale in conspiracy with the accused persons and the official staff and technical assistants of the NESTEA Company, are responsible for the misappropriation and the amounts came to be deposited to several accounts who were not the actual beneficiaries, but some fictitious accounts were created and subsequently, the amounts were withdrawn and transferred into distinct accounts.

The offence is registered in the year 2015 and on completion of investigation, charge-sheet is filed against 121 persons. It is also informed that supplementary charge-sheets are also filed. As far as the appellant no.1 Dilshad is concerned, it is alleged that an amount of Rs.2,65,730/- was deposited in her account vide five different entries from May 2012 to January 2013. It is alleged that she is the mother of the main accused Amit Tamboli who is charged for transferring the misappropriated amounts in the accounts of her sister, brother-in-law, nephew etc. or his near relatives.

The charge against the appellant no.1 is by now crystallised and the amount which is received by her in the accounts has also surfaced on record.

The moot question that arises for consideration in the present Appeal is whether her custodial interrogation is necessary at this stage.

7 The appellants are charged since the main accused Sarika had opened account in the name of distinct persons and transferred scholarship amount into these accounts.

The learned APP make a request that the appellants as a condition of their Appeals being allowed, should be directed to deposit the amount, I made a specific query whether the main accused had deposited the amount and his answer is in the negative.

8 My attention is invited to an order passed by the Apex Court long back in 19/11/2019 in case of the main accused Sarika Kale, when on account of her incarceration for a period of 4 ½ years with large number of witnesses to be examined by the prosecution during trial, she was held entitled to be released on bail.

9 While dealing with an Appeal filed by one of the co-accused Jayshri @ Baida Dattatraya Kale, the Division bench specifically recorded as under :-

“5 Today the situation is that charge-sheet in the present crime has already been filed quite long ago and the case is pending at the stage of framing of charge with the next date being 01.04.2023. Since, the registration of the crime and later on after rejection of the anticipatory bail application of the Appellants on 21.07.2016, the Appellants have never been arrested by Sadarbazar police. The question therefore, would be as to what purpose would be achieved if this appeal is rejected and the appellants are directed to be arrested by the police. We, therefore, put a specific query to the Officer of the Economic Offences Wing of Solapur police, who is personally present before this Court. A query put to her, so as to whether or not Solapur police requires custody of the appellants and the answer given by the said officer is in the negative. She states that it would be enough if the appellants are directed to regularly attend the dates that are and that would be fixed for conducting of trial in the present case by the trial Court at Solapur and they co-operate with the trial Court in speedy disposal of the case.”

I see no reason why the appellants deserve a different treatment. Hence, the following order :-

ORDER

- (a) The Appellant no.1 Dilshad M. Tamboli in Appeal St. No.11628/2023 shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The appellants should not tamper with evidence.
- (d) The appellant shall report to the police station as and when called for.

The Appeals stand disposed of in the aforestated terms.

(SMT. BHARATI DANGRE, J.)