

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date:
2023.01.17
18:53:00
+0530

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

BAIL APPLICATION NO. 4232 OF 2021

Mubarak Momin Khan ..Applicant
VS.
The State of Maharashtra ..Respondent

Mr. Rahul S. Arote, for the Applicant.
Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 16, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP.
- 2.** This is an application for bail in respect of C.R.No. 469 of 2018 registered with Powai Police Station for the offence punishable under sections 386, 387, 364A, 506(ii), 34 of the Indian Penal Code, 1860, under sections 4 and 25 of the Arms Act and section 439 of Code of Criminal Procedure, 1973
- 3.** The main accused Amin Momin Khan had approached the Hon'ble Supreme Court for bail. The bail application

was allowed by an order dated 31/08/2021 passed by the Hon'ble Supreme Court. The order reads thus:

" The petitioner is accused of committing offences punishable under Sections 307, 387, 341, 506, para II, 323 read with 34 IPC. He was apprehended on 07/08/2018. He filed an application for bail on 15/03/2019 which was withdrawn. The allegation against the petitioner is that the complainant was taken by him and the co-accused by force with intent to cause grievous hurt. The complainant was also detained for extortion. The High Court rejected the petitioner's application for bail by an order dated 14/01/2020, on the ground that the petitioner is involved in 11 criminal cases and there is a likelihood of him tampering with the persecution witnesses and the evidence.

The charge sheet was filed on 30.10.2018, but there has been no progress thereafter. We are informed that the charges are not framed till date. Mr. Sushil Karanjkar, learned counsel appearing for the petitioner, referred to the injury report to argue that there was one grievous injury and another minor injury and the complainant was not even admitted to the hospital. He stated that the ingredients of Section 307 IPC are not attracted. He further submitted that the petitioner has been in custody for a period of more than three years and there is no likelihood of the trial being completed soon.

Mr. Rahul Chitnis, learned counsel appearing for the State of Maharashtra, vehemently opposed the application for bail on the ground that the petitioner has criminal antecedents and there is a likelihood of him tampering with the evidence.

In the facts and circumstances of this case, we direct the release of the petitioner on bail subject to the satisfaction of the Trial Court as well as subject to the petitioner living outside the territorial limits of Municipal Corporation of Greater Mumbai and not making any attempt to influence any of the prosecution witnesses.

In case the petitioner acts contrary to the conditions above, the prosecution is at liberty to apply for cancellation of bail.

The special leave petition stands disposed of. Pending application(s), if any, shall also stand disposed of."

4. The applicant seeks bail on the ground of parity.

Learned APP pointed out that there are various criminal antecedents recorded against the applicant. My attention is invited to the order dated 17/03/2021 specially paragraph 6, passed by the Sessions Court rejecting the bail application of the applicant.

5. However, considering that the main accused i.e. accused no.1-Amin Momin Khan has been released on bail by the order passed by the Supreme Court, as the applicant is now in custody for 4 and 1/2 years with no signs of the trial progressing, even the applicant can be released on bail by imposing certain stringent conditions. Hence, the following order.

ORDER

(a) The application is allowed.

(b) The applicant – Mubarak Momin Khan in connection with C.R.No. 469 of 2018 registered with

Powai Police Station shall be released on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more local sureties in the like amount.

(c) Till the trial is over, the applicant shall reside outside the jurisdiction of Greater Mumbai and Thane district.

(d) The applicant 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 applicant should not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the concerned Police Station and shall keep him updated, if there is any change.

(f) The applicant shall report every alternate Saturday of the month i.e. 1st and 3rd Saturday of the month between 11.00 a.m. and 1.00 p.m. at the nearest police station to the place of his residence while residing outside Greater Mumbai and Thane district. The applicant shall inform the investigating officer the details of the place of his residence and the police station which he will be reporting.

(g) Except for the purpose of attending the dates on which the trial is fixed, the applicant shall not enter the area of Greater Mumbai, Mumbai suburban district and Thane district till the trial is over.

6. The application is disposed of.

(M. S. KARNIK, J.)