

SA Pathan

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

BAIL APPLICATION NO.3504 OF 2022

Dilip Dnyanadev Gaikwad ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. S. B. Talekar a/w Ms Madhavi Ayyaipam a/w Ms.
Kalyani Mangave i/by Talekar & Associates, for the
Applicant.

Mr. Amit A Palkar, APP for State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 3, 2023

PC.:

1. This is a second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.PC.') filed by the applicant after the first bail application was rejected by this Court by order dated 5 January 2022 in connection with C.R. No.244 of 2021 of Baramati Taluka police station, Pune (Rural) for offences punishable under Sections 304, 420, 279, 188, 120B r/w 34 of the Indian Penal Code (for short 'IPC') and under Section 2, 3 and 4 of the Epidemic Diseases Act, 1897, under Section 7(1)(a) (ii) of the Essential Commodities Act, Section 18(c) r/w Section 27(b)(ii), 18A r/w 28, 18(a)(i) and 17B r/w 27(c), 22(1)(cca) r/w Section 22(3), rule 104 r/w 27(d) of the Drugs and Cosmetics Act, 1940, registered against the applicant based on the complaint filed by the Food Inspector.

2. The allegations against the applicant are that he and the co-accused sold spurious Remdesivir injections during the pandemic at Rs.35,000 per vial. The investigation disclosed the death of one patient Swapnil Jadhav due to a fake Remdesivir injection.

3. The co-ordinate Bench rejected the earlier application by assigning the following reasons:

“9. The offence by any standard is serious. When the society in general and the individuals in particular were going through the ordeal of the pandemic and the consequent lock the Applicants had taken undue advantage of the situation for their own benefit. This is not a case where genuine Remdesivir injections were sold in the black market. The Applicants had managed to sell vials containing paracetamol liquid as Remdesivir injections endangering the life of the persons being treated for Covid-19 infection.

10. The investigation also disclosed that there was the death of one such patient, namely Swapnil Jadhav, which is evident from the statement of Dr Gorad. Upon the death of Swapnil Jadhav, offence under Section 304 and 120B of IPC was added to the crime.

11. Currently society is grappling with the third wave of the pandemic, and the possibility of the Applicants again indulging into similar activities and thereby misusing their liberty cannot be ruled out.”

4. Learned Advocate for the applicant submits that there is a material change in circumstance as the co-accused have been released on bail by the Apex Court. He placed reliance on an order of the Apex Court in Criminal Appeal No.1649 of 2022. He submits that the doctor who prescribed the medicine has been released on bail. Therefore, the applicant's role in the alleged offence is lesser.

According to him, the co-ordinate Bench rejected the application mainly because of reasons in paragraph 11. He submits that now that the pandemic is over, there is no possibility of the applicant indulging in similar activities, thereby misusing liberty. He, therefore, prays that the applicant be released on bail. According to the applicant, the applicant was arrested on 18 April 2021. This Court rejected the earlier application on 5 January 2022. Therefore, the passage of one and half years after the passing of the order by the co-ordinate Bench constitutes a material change in circumstance.

5. Learned APP submits that there is no change in circumstance. The co-accused released on bail have a lesser role than the applicant.

6. On perusal of the order passed by the Apex Court, it appears that the delivery boy and doctor were directed to be released on bail. The role attributed to the applicant is to sell spurious medicine. Considering the role attributed to the applicant, the doctrine of parity is inapplicable. In the case of **Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav & Anr** reported in (2005) 2 SCC 42, the Apex Court has challenged the subject of a material change in circumstance by observing as under:

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue, even in bail matters, unless, of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which

requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused, who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country.

7. The three factors necessary to constitute a change in circumstance are absent in the facts of the case. Passage of one and half years after earlier order, in the facts of the case, will not constitute a change in circumstance. Considering the nature of the allegations of selling spurious drugs and provisions applied against the applicant, there is no made out for the release of the applicant at this stage. Hence, the bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)