

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

***INTERIM APPLICATION NO. 4604 OF 2023
IN
CRIMINAL APPEAL NO. 11 OF 2022***

Satyanarayana Rani,
Aged about 73 years,
Currently incarcerated as,
UTP 965 at Arthur Road Central Prison,
Mumbai.
Res : H. No. 1-124/8,
Thimmapur, Thimappur Mandal,
Mandamarri, Telangana 504209

...Applicant

Versus

1. National Investigation Agency
(FIR No. 2 of 2019)

2. State of Maharashtra

...Respondents

Dr. Yug Mohit Chaudhry a/w Mr. Anush Shetty for the Applicant
in IA/4604/2023

Mr. Shrikant Sonkawade, Spl. PP for the Respondent No.1-NIA

Ms. P. P. Shinde, A.P.P. for the Respondent No.2-State

PSI Mr. Sachin Chorge from NIA is present in Court

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

WEDNESDAY, 20th DECEMBER 2023

ORAL ORDER (Per Revati Mohite Dere, J.) :

1 At the outset, learned counsel for the applicant seeks leave to amend the application. Leave granted. Amendment be carried out forthwith.

2 By this application, the applicant seeks modification of condition Nos. (iii) and (iv) of the order dated 15th July 2022 passed by this Court in the aforesaid appeal being Criminal Appeal No. 11/2022. The conditions of which modification is sought, read thus :

“iii) The appellant-Satyanarayana Rani be released on bail on furnishing a PR bond in the sum of Rs. 1 ,00,000/- (Rupees One Lakh Only) with one or two solvent sureties in the like amount to the satisfaction of the learned Judge, NIA Court.

iv) The appellant shall report to the Office of the NIA., Mumbai Branch, Mumbai, twice every week on Tuesday and Friday, between 10:00 am to 12:00 noon, for a period of one month from the date of his release. Thereafter, the appellant shall report the said Office on every Tuesday

between 10:00 am to 12:00 noon for the next two months. Thereafter, the appellant shall report to the said Office on first Tuesday of every month between 10:00 am to 12:00 noon, till conclusion of the trial.”

3 Learned counsel for the applicant submits that the applicant aged 73 years old, was granted bail vide order dated 15th July 2022 on certain terms and conditions stipulated in the said order. He submits that despite the applicant having been enlarged on bail, pending trial, the applicant has not been able to furnish surety as directed by this Court, as he has no family members in Mumbai who can stand surety for him. He further submits that the applicant is penurious and does not have any resources to afford any kind of surety or even to give cash bail. He further submits that the applicant suffers from serious health ailments including cerebral cavernoma, a focal lesion in the left temporal lobe, history of tremors in both hands, cataract and disability in his left limb, which makes walking extremely difficult. He submits that in these circumstances, the applicant be released on personal bond.

4 Learned counsel for the applicant has filed an affidavit of the applicant (currently lodged in Arthur Road Central Jail, Mumbai), duly affirmed before the Superintendent of Arthur Road Central Jail, Mumbai. In the said affidavit, the applicant, in para 6, has given the address where he would be residing, in the event, he is released on bail. We had granted the learned Spl. P.P. time to verify the said address. Learned Spl. P.P. has verified the said address.

5 Perused the application. This Court (Coram : Revati Mohite Dere & V. G. Bisht, JJ.) had enlarged the applicant on bail vide order dated 15th July 2022 on certain terms and conditions, as stipulated in the said order. The operative part of the said order dated 15th July 2022 reads as under :

“ORDER

i) The appeal stands allowed.

ii) The impugned order dated 20th August 2021 passed by the learned Special Court below Exhibit 56 in NIA Special Case No.06 of 2019 stands quashed and set- aside.

iii) The appellant-Satyanarayana Rani be released on bail on furnishing a PR bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one or two solvent sureties in the like amount to the satisfaction of the learned Judge, NIA Court.

iv) The appellant shall report to the Office of the NIA., Mumbai Branch, Mumbai, twice every week on Tuesday and Friday, between 10:00 am to 12:00 noon, for a period of one month from the date of his release. Thereafter, the appellant shall report the said Office on every Tuesday between 10:00 am to 12:00 noon for the next two months. Thereafter, the appellant shall report to the said Office on first Tuesday of every month between 10:00 am to 12:00 noon, till conclusion of the trial.

v) The appellant shall attend the NIA Court on every date of the proceeding, unless exempted.

vi) The appellant shall not leave the jurisdiction of the NIA Court, till the conclusion of the trial, without the prior permission of the NIA Court.

vii) The appellant shall surrender his passport, if any (if not already surrendered). If the appellant does not hold the passport, he shall file an affidavit to that effect before the NIA Court.

viii) The appellant shall not, either himself or through any other person, tamper with the prosecution evidence and give threats or inducement to any of prosecution witnesses.

ix) The appellant shall not indulge in any activities similar to the activities on the basis of which the appellant stands prosecuted.

x) The appellant shall not try to establish communication with the co-accused or any other person involved directly or indirectly in similar activities, through any mode of communication.

xi) The appellant shall co-operate in expeditious disposal of the trial and in case delay is caused due to him, then his bail would be liable to be cancelled.

xii) In the event, the appellant violates any of the aforesaid conditions, the relief of bail granted by this Court will be liable to be cancelled.

xiii) After release of appellant on bail, he shall file undertaking within two weeks before the NIA Court stating therein, that he will strictly abide by the conditions No. (iv) to (x) mentioned hereinabove.”

6 Although the said order was pronounced on 15th July 2022, till date, the applicant has not been able to furnish surety and he continues to remain incarcerated in the prison, for more than a year. It appears that the applicant has no family member or friends in Mumbai, who can stand surety for him. It is not in dispute that the applicant's wife, also a co-accused in the said

case, expired during the pendency of the trial, as she was suffering from cancer. It also appears that the applicant suffers from serious health ailments and medical certificates to that effect have been annexed to the application i.e. that the applicant is suffering from cerebral cavernoma, a focal lesion in the left temporal lobe, history of tremors in both hands, cataract and disability in his left limb, which makes walking extremely difficult.

7 We had, whilst enlarging the applicant on bail, observed that after taking into consideration the totality of the material gathered by the investigation agency *qua* the applicant, that the said evidence does not *prima facie* point to the involvement of the applicant in the offences with which he is charged and as such, the embargo of Section 43(D) of Unlawful Activities (Prevention) Act, cannot be invoked. We also noted in the said order that the applicant was more than 70 years of age, suffering from severe ailments and that the applicant had no

criminal antecedents. It was further observed that continuing to incarcerate the applicant in jail, would not only endanger his life and health but would be a gross violation of Article 21 of the Constitution of India, more particularly, when the trial would take a long time.

8 As noted above, the applicant was enlarged on bail vide order dated 15th July 2022 and till date, the applicant was unable to furnish sureties, considering his financial condition and as no family members or friends being there, to stand as surety for him.

9 The Apex Court in *Moti Ram & Ors. v. State of Madhya Pradesh*¹ was concerned with the direction to the appellants therein to furnish the sureties. Justice Krishna Iyer, in the said judgment, observed in paras 30, 31 and 32 as under :

“30. If sureties are obligatory even for juveniles, females and sickly accused while they can be dispensed with, after

1 1978 SCC (Cri.) 485

*being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release **only** with sureties while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean, viz., a generic expression used to describe judicial release from Custodia Juris. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both-release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.*

31. *Even so, poor men-Indians are, in monetary terms, indigents - young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances - put whatever reasonable conditions you may.*

32. *It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs.10,000/-. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by 'We, the People of India"', is meant for the butcher, the baker and the candle-stick maker - shall we add, the bonded labour and pavement dweller."*

10 As far as the applicant remaining present for trial is concerned, we had asked the applicant to file an affidavit,

pursuant to which, the applicant has filed an affidavit dated 16th December 2023, duly affirmed before the Superintendent of Arthur Road Central Jail, Mumbai. In the said affidavit, the applicant has stated that he has no family members or friends in Mumbai, who can stand surety for him and as such, he continues to remain incarcerated in the prison. He has stated that he is penurious and cannot afford to furnish any kind of surety. He has further stated that he is suffering from several health ailments and as such he should be released on PR Bond, without any surety. He has further in para 6 of his affidavit stated that in the event, he is released on bail without surety, he will reside at the address mentioned therein and that he will not change the place of residence without the permission of the NIA Court. As far as address is concerned, the prosecution has verified the said address and as such, they do not dispute the existence of the same.

11 The applicant has also undertaken to attend the NIA Court as and when required and that he will not leave the jurisdiction of the NIA Court until the conclusion of the trial, without the permission of the NIA Court.

12 The undertakings given by the applicant in the affidavit are accepted as an undertaking to this Court.

13 Learned Spl. PP, opposes the application. He states that the Special Leave Petition (`SLP') against the order enlarging the applicant on bail was filed on 6th April 2023 and is pending before the Apex Court. Learned counsel for the applicant states that no steps have been taken by the NIA to obtain a stay to the order enlarging the applicant on bail, despite several listings of the aforesaid SLP and as such, the applicant cannot be detained only because the SLP is pending, more particularly, when there is no stay to the order enlarging the applicant on bail.

14 Accordingly, in view of the affidavit filed by the applicant, the condition Nos. (iii) and (iv) imposed by this Court vide order dated 15th July 2022, stand modified as under :

“iii) The applicant-Satyanarayana Rani be released on bail on furnishing a PR bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only);

iv) The appellant shall report to the Office of the NIA., Mumbai Branch, Mumbai, on the first Friday of every month, between 10:00 a.m to 12:00 noon, till conclusion of the trial, except if the date in the trial Court falls on a Friday. In such event, the applicant shall attend the Office of the NIA on the following Saturday at the same time.”

15 As far as clause (vi) is concerned, learned Spl. P.P. states that clause (vi) be modified to the extent that the applicant should not leave the jurisdiction of the NIA Court, Mumbai and Thane, till the conclusion of the trial. Learned counsel for the applicant has no objection to the said modification. Accordingly, the said condition in clause (vi) be modified as under :

“vi) The appellant shall not leave the jurisdiction of the NIA Court, Mumbai and Thane, till the conclusion of the trial, without the prior permission of the NIA Court.”

16 Learned Spl. P.P. submits that in the event, the applicant obtains a mobile, he should give the number to the concerned authorities of the NIA. Accordingly, in addition to the conditions imposed vide order dated 15th July 2022, following condition is imposed on the applicant :

“xiv) The applicant, in the event, obtains a mobile phone, would give the details of the said phone to the concerned authorities of the NIA.”

17 Rest of the order dated 15th July 2022 to remain as it is.

18 Application stands disposed of on the above terms.

19 All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.