

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.50 OF 2023

Sheikh Hussain S/o Abdul Jabbar

Versus

State of Maharashtra, through P.S. Sakkardhara, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.V. Samarth, Senior Adv. a/b Shri V.P. Ingle, Adv. for the applicant.

Shri H.D. Dubey, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 20/03/2023

1. Heard.

2. The applicant is seeking pre-arrest bail in Crime No.460 of 2022, dated 21.09.2022 registered with Police Station: Sakkardara, District Nagpur (City), for the offence punishable under Sections 420 and 409 read with Section 34 of the Indian Penal Code.

3. Shri Samarth, learned Senior Advocate for the applicant argues that after rejection of the first anticipatory bail application on 21.12.2022, the present application came to be filed on the ground that the applicant is suffering from heart ailment and doctor has advised him to undergo Angioplasty. It is submitted that

in the above referred change in circumstances, the application came to be filed. As regards the maintainability of successive application once the earlier application was rejected, the learned counsel for the applicant has placed reliance on a judgment of full bench of Calcutta High Court in the case of *Sudip Sen v. The State of West Bengal*¹.

4. He further argues on merit that in economic offences, the Hon'ble Supreme Court of India in the case of *Satender Kumar Antil v. Central Bureau of Investigation and Anr.*² has laid down the criteria for grant of bail. It is submitted that as in the present matter, the custody of the applicant is not necessary, he may be released on bail.

5. Shri Samarth, learned Senior Advocate further argues that in the case of *Sarfaraz Jaliyawala v. State of Maharashtra*, the Hon'ble Supreme Court of India directed the applicant in the said case that he may apply for bail before the trial Court and the same shall be considered by the trial Court expeditiously as possible and in accordance with the law. It is submitted that in the said matter, the Hon'ble Supreme Court of

1 2010 CRI.L.J. 4628

2 AIR 2022 SC 3386

India directed not to take coercive action for two weeks or till the order is passed on the application for bail whichever is earlier. He submits that the same order may be passed in the present matter so that the applicant can undergo Angioplasty.

6. On the other hand, the learned A.P.P. after taking instruction makes a statement that the medical facility like the Angioplasty is available in the Government Hospital and the State can take every care of the applicant as regards his heart ailment and if necessary, he will be referred to the specialized doctor.

7. On merit, it is submitted that once the application was rejected on merit by recording the reasons, unless it is pointed out that there are change in circumstances, the successive bail application is not maintainable. He, therefore, submits that the present application is not tenable as there are no change in circumstances after the rejection of the first bail application on merit.

8. In light of the rival contentions, I have perused the application, documents filed along with the application, authorities cited by the learned Senior

Advocate and the earlier order rejecting the bail application of the applicant.

9. This Court while rejecting the first bail application, has recorded the reasons which reads thus :

“11. In the year 2016, the Administrator was appointed and thereafter the elections were held and new body took charge of the Management in the year 2021. The audit conducted during the period of administrator and the audit conducted after the new body took charge shows financial irregularities. Thereupon, the complaint was lodged. In the investigation, it was found that on eight occasions between 10th March, 2011 to 9th April, 2015, Rs.1,25,00,000/- were transferred from the account of the Trust to the personal account of the applicant.

12. It is further revealed from the case diary that though the cheques were signed by the Secretary and the Treasurer and not by the applicant, the amount was deposited in the personal account of the applicant. Whether the said amount which was towards reimbursement or not, cannot be commented upon it at this stage, in absence of any evidence to that effect. Furthermore, it is a matter of trial.

13. Though there are some discrepancies in the two audit reports, about total amount of misappropriation, however, the fact remains that there is incriminating material to prima facie shows that financial irregularities have taken place in the Trust during the period when the applicant was the President of the Trust. In the circumstances, I am of the view that learned Additional Public Prosecutor is right in saying that custodial interrogation of the applicant is necessary.

14. The religious Trust's huge amount has been allegedly transferred in the account of the applicant

and thereby the amount of such religious trust has been misappropriated. Therefore, proper and thorough investigation is necessary in this case and same is not possible without custodial interrogation”

10. This Court has rejected the first application on merit, after taking into consideration the incriminating material available against the applicant and the arguments made by the learned Senior Advocate for the applicant. It is a settled law that once the bail application is rejected on merit, successive bail application is maintainable only on ground of substantial change in facts and circumstances of the case due to subsequent events.

11. In the case of *Sudip Sen vs. State of West Bengal (Supra)*, on which the learned Senior Advocate appearing for the applicant has placed reliance, the full bench has observed thus:

“31. We, therefore, sum up our conclusions thus :-

(1) Whether the applicant/accused can move second application for anticipatory bail in case his first application is rejected; if yes, in what contingencies before the same Court or to the superior court?

(a) A person has a right to move either the High Court or the Court of Session for directions under Section 438 Cr. P.C. at his option. In case a person chooses to move the Court of Session in the first instance and his application for grant of

anticipatory bail under Section 438 is rejected, he can again move the High Court for the same reason under Section 438 Cr. P.C. itself.

(b) where a person chooses to straightway move the High Court in the first instance and his application is rejected on the same set of facts and circumstances, he will not be entitled to move the Court of Session for the second time, but may invoke the extraordinary powers of the Supreme Court by seeking special leave to appeal in the Supreme Court.

(c) A person will be entitled to move the High Court or the Court of Session, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.

(2) Where his first application is granted, but his application for ordinary/regular bail is rejected by the trial Court under Section 437/439 Cr.P.C.

If a person has been directed to be released on bail in the event of his arrest under Section 438 Cr. P.C. for limited duration during which the regular Court has to be moved for bail, he shall move the trial Court in the first instance for seeking such bail and the order releasing him on anticipatory bail would come to an end, and in case his application for ordinary/regular bail is rejected, the trial Court shall remand him to police/judicial custody, as the case may be.”

12. Thus, from the above referred observation of the full Bench of the Calcutta High Court, it is evident that a person will be entitled to move the High

Court or the Sessions Court, as the case may be, for the second time. He can do so only on the ground of substantial change in the facts and circumstances of the case due to subsequent events. However, he will not be entitled to move the second application on the ground that the Court on earlier occasion failed to consider any particular aspect or material on record or that any point then available to him was not agitated before the Court.

13. Thus, considering the above referred observations, the submissions made by the learned Senior Advocate on merit of the matter and saying that the custody of the applicant is not necessary, cannot be considered in successive bail application once the earlier application was rejected after considering the merit of the matter.

14. As far as the change in circumstances is concerned, after rejection of the first application, an advised by the doctor for Angioplasty which treatment or facility is available in the Government Hospital and when the State is ready to take all medical care of the applicant, it cannot be termed as change in circumstances in this case for entertaining successive bail application.

15. So far as, the protection granted by the Hon'ble Supreme Court of India in the case of *Sarfaraz Jaliyawala (Supra)* is concerned, the same was granted in the facts and circumstances of that case. Moreover, the Hon'ble Supreme Court of India in the case of *Nathu Singh and Ors. Vs. State of Uttar Pradesh and Ors.*³ has held that once the application for bail is rejected, *interim protection* cannot be granted unless the applicant makes a statement that he wants some time to surrender. In this case, the applicant does not come up with the request that he wants to surrender before the Police or the Magistrate but due to certain difficulties, it is not possible for him to surrender immediately and therefore, some time is required.

Accordingly, the application is **rejected**.

[ANIL S. KILOR, J.]