



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 BAIL APPLICATION NO. 2333 OF 2023
WITH
CRIMINAL APPLICATION NO. 589 OF 2024
IN BA/2333/2023

SUNIL LAXMAN LOKHANDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rajendrrraa Deshmukkha (Senior
Advocate) a/w Ms. Rakshanda Jaiswal i/b Mr. Nitin B. Bhavar.
APP for Respondent/State : Mr. A. S. Shinde.
Advocate for Complainant to assist APP : Mr. N. S. Ghanekar.
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CORAM : S. G. MEHARE, J.
DATE : 05.02.2024

PER COURT :-

1. Heard the learned senior counsel for the applicant, learned APP for the respondent-State and learned counsel for the first informant.
2. This is a successive bail application of the applicant in Crime No.848 of 2021, registered with Rahuri Police Station, District Ahmednagar, for the offences punishable under Sections 307, 450, 364, 342, 506, 195-A, 387 of the IPC and Section 3/25 and 5/27 of the Arms Act.

3. Considering the material before the Court, the earlier bail application was rejected. Thereafter, the applicant again approached the Sessions Court seeking bail. Learned Sessions Court pleased to reject the bail application.

4. Learned senior counsel for the applicant submits that subsequent to the FIR, a similar FIR on the same day with similar allegations was registered. Registering the subsequent FIR was impugned before the High Court, the Hon'ble Division Bench ordered that since the second FIR is also about the same incident, it be merged into the first FIR. Learned senior counsel for the applicant canvassed that this is a change in circumstance.

5. Considering the principle of substantial change in circumstance, this Court is of the view that merging of two FIRs lodged on the same day about the similar incident is not a substantial change in circumstance.

6. Secondly, the learned senior counsel for the applicant submits that there is inordinate delay in commencing the trial. The FIR was lodged on 07.10.2021. Since then, he is behind bar. He has tried to canvass that the Court did not frame the charge. He has a right to file the applications for bail and for the other reliefs. He has argued that filing the bail application

or other applications is no bar to frame the charges. He is correct, there is no bar to frame the charge even the bail application is filed. However, this is not the practice before the Trial Court. The parties more particularly, the accused requests the Court not to proceed with the matter unless his bail application or other applications are decided. For the obvious reason that they wanted to impugn the order of the Trial Court. Same thing happened in this case. The learned Trial Court has specifically observed that the applicant was called on V. C. on 28.11.2023. However, he requested the Court not to frame the charge in the absence of his advocate. Therefore, the charge could be framed. It has also been correctly observed that in between the accused has moved applications for releasing him on bail and application to shift him from Nashik jail to Yerwada jail. The conduct of the accused shows that he was not interested to get the charge framed and commence the trial. He directly requested the Court not to frame the charge. The observations of the learned Trial Court indicates that the Court was going to commence the trial, but it was the accused, who did not allow the Court to proceed with the trial. Simultaneously, he was filing the applications. Obviously, the charge could not be framed yet.

7. The earlier bail application of the applicant was withdrawn. After hearing the learned counsel for the applicant, on instructions, he withdrew the application, as the Court has expressed disinclination to grant the bail. The learned senior counsel would argue that such dismissal order on withdrawal with the above observation is not dismissal of the application. Hence, it cannot be said it was dismissed. However, the Court does not agree with his submissions. It was purely a dismissal of the application on merit.

8. Learned APP and the learned counsel for the first informant correctly pointed out that the trial was not deliberately protracted by the prosecution. It was the applicant, who was not supporting the Court. Therefore, the trial could not be progressed. However, now the Court may frame the charge.

9. The Court is not satisfied with the arguments of learned senior counsel for the applicant that he deserves bail. However, the Trial Court may be directed to frame the charge and proceed with the matter. Hence, the following order :

ORDER

- (i) The bail application stands dismissed.

- (ii) The learned Trial Court is directed to frame the charges at the earliest provided all the parties to co-operate the Trial Court.
- (iii) Criminal application No.589 of 2024 to assist the learned APP stands disposed of.

(S. G. MEHARE, J.)

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