

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 5155 OF 2024**

Dattatray Padmakar Gharat

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Mr. Saurabh D. Butala, Advocate for the Applicant.

Mr. Ganesh Gupta a/w. Sahil Ghorpade, Surya P. Gupta and Madan Khansole i/b. G.G.Legal Associates, Advocates for Respondent No.2

Mr. Swapnil V. Walve, APP for Respondent No.1.

API – Ganesh Shinde, Uran Police Station, Navi Mumbai.

CORAM : SHIVKUMAR DIGE, J.**DATED : 17th DECEMBER, 2024.****P.C. :**

1. Learned counsel for respondent No.2 requests for filing Vakalatnama. Liberty to file Vakalatnama for respondent No.2.

2. Heard learned counsel for the applicant, learned APP for Respondent No.1 and learned counsel for respondent No.2.

3. It is contention of learned counsel for the applicant that in this case investigation is completed, chargesheet has been filed against the applicant, notice under Section 41-A of Cr.P.C. was issued against the applicant. Earlier the learned Special Court has granted bail to the applicant but it was granted without hearing the respondent No.2- first informant hence this Court canceled the bail of the applicant and

remanded the matter back to learned Special Court to decide afresh bail application filed by the applicant after hearing respondent No.2. Learned counsel further submitted that after remand of the matter, learned Special Court has rejected the bail application of the applicant and has directed the applicant to surrender within one week which expired on 09.12.2024 thereafter, this Court extended the said period which expires tomorrow. Learned counsel further submitted that as investigation is completed, chargesheet has been filed, no custodial interrogation of the applicant is required. The applicant is present before the Court hence this Court can decide the bail application of the applicant and requested to allow the application. He relied on *Siddharth Vs. State of Uttar Pradesh and Anr.*¹.

4. Learned APP along with learned counsel for respondent No.2 strongly objected to allow the application on the ground that the applicant has been directed by the learned Special Court to surrender, in spite of that the applicant has preferred this appeal which is not maintainable. Learned APP further submitted that the applicant is not behind bar and without arrest the applicant cannot make this application. Considering the charges leveled against the applicant his custodial interrogation is required and requested to reject the application.

5. I have heard all the learned counsel. Perused the order passed by learned Special Court. Learned Special Court has rejected the regular

¹ (2022) 1 SCC 676

bail application filed by the applicant and directed him to surrender before the police. Considering the peculiar facts of the case, I pass following order.

ORDER

- (i) The application is partly allowed.
- (ii) The applicant shall surrender before the learned Special Court and file bail application at the same time if he wishes within seven days after receipt of this order.
- (iii) The learned Special Court shall decide the said bail application on its own merit.
- (iv) The applicant shall give notice to the respondent No.2 before surrendering before the Special Court and filing bail application.
- (v) No coercive action be taken against the applicant till surrendering before the Special Court.

(SHIVKUMAR DIGE, J.)