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

BAIL APPLICATION NO.1856 OF 2024

Vaibhav Babanrao Devkate ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Mr. Amin Solkar with Mr. Umang Shah for the applicant.

Mrs. Megha S. Bajoria, APP for the respondent-State.

Mr. Vaibhav Baban Devkate, and Mr. S.B. Salve, PSI, Hill Line Police Station, Ulhasnagar, are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 18, 2025

P.C.:

1. This is the second bail application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), seeking regular bail in connection with Crime Register No. 410 of 2022 registered with Hill Line Police Station, Ulhasnagar, District Thane, for an offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC" for short).

2. The case of the prosecution, in brief, is that one Kanhaiyalal resides with his family at Shantinagar, Ulhasnagar. He owns 11 rooms in Newali Naka, Saibaba Chawl, Khone Road, Ambarnath, out of which 8 rooms are rented out and 3 are vacant. One of the tenants was Sanjay Ramujagir Chauhan. On 2nd November 2022,

Sanjay informed Kanhaiyalal that the applicant was in need of a rented room. Accordingly, Kanhaiyalal agreed to rent out a room to the applicant for a deposit of ₹5,000/- and monthly rent of ₹3,000/-. At that time, Sanjay provided the identity card of one Laxmi Manohar Tayde as proof.

3. On 4th November 2022, when Kanhaiyalal went to the room to execute the leave and license agreement, he found the room locked. On 5th and 6th November 2022, the room was again found locked. On making inquiries with Sanjay about the applicant and Laxmi, no satisfactory reply was received. On 7th November 2022, around 7.55 p.m., Sanjay telephonically informed Kanhaiyalal that someone had strangled Laxmi inside the rented room. On reaching the spot, Kanhaiyalal saw that Laxmi had been strangulated with her own saree and was bleeding from the nose. She was immediately rushed to the hospital where she was declared dead before admission.

4. The applicant had earlier filed Bail Application No. 2132 of 2023, which came to be withdrawn on 11th January 2024. The present bail application has been filed on 18th April 2024.

5. Mr. Solkar, learned Advocate for the applicant, submitted that while withdrawing the earlier bail application, liberty was specifically granted to file a fresh application as advised. He therefore contends that the present bail application is maintainable, and all contentions on merits are open for consideration. According to him, the earlier order of withdrawal does not operate as a bar against raising grounds afresh in this

application.

6. Per contra, Mrs. Bajoria, learned APP, opposed the bail application. She submits that though the earlier order dated 11th January 2024 permitted withdrawal of the application with liberty as prayed for, such liberty has to be understood in the proper legal sense. According to her, a fresh application would be maintainable only if there is a change in circumstances after the withdrawal of the earlier application. In absence of such material change, filing a second bail application on the same grounds would not be permissible.

7. I have given my thoughtful consideration to the rival submissions advanced on behalf of the applicant and the learned Additional Public Prosecutor. The issue essentially turns upon the true import of the order dated 11th January 2024 passed by the coordinate Bench of this Court and the scope of liberty therein granted to the applicant.

8. The order dated 11th January 2024 reads thus:

- “1. Heard the learned Counsel for the Applicant.
2. Learned Counsel for the Applicant, on instructions, seeks leave to withdraw the application with liberty to take out fresh application as advised.
3. Leave granted.
4. Application stands dismissed as withdrawn with liberty as prayed for.”

9. A careful reading of the aforesaid order makes it manifest that the Advocate for the applicant, upon obtaining instructions,

did not press the bail application on merits but sought liberty to withdraw the same, reserving a right to file fresh application as advised. The Court granted such liberty and dismissed the application as withdrawn.

10. The law in this regard is well settled. When a bail application, after filing of charge-sheet, is withdrawn by the accused, such withdrawal amounts in substance to a dismissal of the application. The Court clarified that in such cases, a subsequent application would be maintainable only if the accused is able to point out a fresh ground or material change in circumstances.

11. The reason behind this principle is simple. When a bail application is heard, and the Court is not willing to grant bail, it normally has to give reasons for rejecting the request. These reasons, once recorded in the Court's order, become part of the case record and may be construed against the accused at the time of trial (may be erroneously), as they may show prima facie findings against him. To avoid such observations affecting the accused later, the lawyer for the accused often asks the Court to allow withdrawal of the application. The Court, being fair, usually allows this withdrawal. But once a bail application is filed and then withdrawn, it cannot be treated as if it was never filed. In effect, it amounts to dismissal of the application, only without detailed reasons. The difference is only in form, not in effect.

12. For this reason, the same rule which applies to successive bail applications after rejection also applies when the earlier

application has been withdrawn. If it were otherwise, an accused could keep filing and withdrawing bail applications again and again, forcing the Court to look at the same matter repeatedly without any new fact or law situation. This would clearly be misuse of the legal process and against the principle that Court decisions must have finality. The law therefore maintains a balance, while it allows successive bail applications, it makes it mandatory that such applications must be supported by fresh grounds or a real change in circumstances. Without such change, the bar against repeated applications must be applied strictly.

13. This legal position has been consistently followed. The Single Judge of the Gujarat High Court in *State of Gujarat v. Ashish B. Gandhi*, 1992 SCC OnLine Guj 152, reiterated that where the earlier application was withdrawn without being pressed, it amounts to an order of dismissal. Unless fresh circumstances or new grounds are placed before the Court, a subsequent application cannot be entertained.

14. The principle has also received imprimatur of the Supreme Court. In *State of Maharashtra v. Captain Buddhikota Subha Rao*, AIR 1989 SC 2292, the Apex Court held that successive bail applications would be permissible only if there is a change in circumstance which gives rise to a new ground. Again, in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, (2004) 7 SCC 528, the Supreme Court held in clear terms that while successive bail applications can indeed be filed, the Court is obliged to consider when there has been a substantial change either in the fact situation or in the legal position which would justify the

entertainment of such a fresh application.

15. When tested on the basis of the above principles, it is clear that the liberty given by this Court on 11th January 2024 cannot be read separately, nor can it be stretched beyond the limits of established bail law. The words “with liberty as prayed for” are not a blanket license allowing the accused to come back to the Court again and again on the same allegations and submissions. Judicial orders have to be understood in the light of settled principles of law, and liberty granted by the Court must always be seen as liberty controlled by the law itself.

16. If we accept the interpretation suggested by the applicant, that liberty to file a fresh application means liberty to raise all issues on merits again even without any change in circumstances, then the principle of finality in judicial decisions would be seriously affected. Every withdrawal of a bail application would then mean starting afresh and reopening the matter endlessly. This is not the intention of the law and not the purpose of judicial discretion. Courts, in criminal matters, cannot become revolving doors where the same issues are brought up again and again without any new development.

17. It is important to underline that liberty always comes with responsibility. An accused who withdraws a bail application does so with the full understanding that, at that stage, he has used up all the grounds available to him. If he files another application, it must show fresh circumstances which could not be raised earlier or which have arisen later. Otherwise, the principles of judicial

discipline and certainty in Court orders will be weakened.

18. Therefore, liberty as granted in the order dated 11th January 2024 is not carte blanche. It is liberty within the boundaries of law, subject to the requirement of changed circumstances, and controlled by the basic principle that criminal process should not be misused by filing repeated and unjustified applications.

19. In the present case, the applicant has not pointed out any material change either in the factual matrix or in the legal position between the withdrawal of the earlier bail application in January 2024 and the filing of the present application in April 2024. No fresh ground has been urged which could justify a departure from the settled position.

20. Therefore, in my considered opinion, the present bail application is not maintainable in law and must fail on this short ground.

(AMIT BORKAR, J.)