

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1505 OF 2025

Navalsingh Ajam Alawa & Ors.	...Petitioners
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Aniket Vagal a/w. Ms. Savvy Kolhekar, for the Petitioners.
Mr. B. B. Kulkarni, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 20th JUNE 2025

PC:-

1. Heard Mr. Aniket Vagal a/w. Ms. Savvy Kolhekar, learned Counsel appearing for the Petitioners and Mr. Kulkarni, learned APP appearing for the Respondent-State.

2. The challenge in this Writ Petition is to the order dated 21st November 2024 passed by the learned Adhoc District Judge-1 and Additional Sessions Judge, Pune below Exhibits 52 and 54 in Sessions Case No.1323 of 2022. The said Applications bearing Exhibits 52 and 54 were filed praying that solvent sureties be accepted and the Petitioners be released on bail.

3. Perusal of the record shows that the Petitioners have been granted default bail by the order dated 11th May 2022 passed by the learned J.M.F.C., Court No.8, Pune in Default Bail Application in Crime No.21 of 2022 of Marketyard Police Station, Pune. The said Application has been filed for default bail by the Petitioners under Section 167 (2) of the Code of Criminal Procedure, 1973. The Operative Part of the said order dated 11th May 2022 reads as under:

“:O R D E R:

(a) The accused are hereby released on default bail on their executing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.

(b) Issue notice to the I.O. for non filing of the charge-sheet within stipulated period.”

4. It appears that the Petitioners could not furnish sureties and therefore, although they have been released on bail by the order dated 11th May 2022, till date, the Petitioners could not avail the said bail therefore, after making arrangement to furnish solvent sureties, the Petitioners have filed Applications bearing Exhibits 52 and 54 seeking to furnish solvent sureties and the said Application

has been dismissed by the impugned order dated 21st November 2024. The reasoning of the learned Additional Sessions Judge while rejecting the said Application is to be found in paragraph No.5. The relevant portion of the said paragraph No.5 reads as under:

“5. Hence, it appears that after passing the default bail order by the Magistrate, the applicants/accused had not furnished the bail as directed by Magistrate vide order dated 11/5/2022. Near about two and half years have gone. Thereafter, when the trial is going on, this application is moved. As per the proviso of section 167(2) of the Cr.P.C., the accused shall be released on bail if he prepared and does furnish bail. Therefore, this provision clearly shows that the accused shall be prepared and he thus furnish the bail. In other words, it can be said that if the accused is not prepared and does not furnish bail, he cannot avail the right of default bail....”

5. Learned Counsel appearing for the Petitioners relies on the decision of the Madras High Court in the case of ***Periyasamy vs. State By The Inspector of Police***¹. The relevant portion of paragraph No.7 on which the learned Counsel appearing for the Petitioners has relied, reads as under:

“7....In this regard, it should be underlined that there are two judicial processes in the matter of

1 2010 Cri.L.J. 3815

*release of an accused on bail. Firstly, an order granting bail is passed either under Section 436 or 437 of the Code or under Section 167(2) of the Code and thereafter, the execution of bond by accused and sureties is made by a separate process as enshrined in Section 441 of the Code. **If once bail is granted under any of these provisions, unless the same is cancelled in the manner known to law, it will remain in force forever....***"

(Emphasis added)

The above observations are squarely applicable to the present case.

6. Thus, this is a case where the Petitioners have been granted bail by the order dated 11th May 2022 and as they could not furnish sureties, inspite of granting bail, the Petitioners are behind bars for about 3 years.

7. Accordingly, in the facts and circumstances and in view of the law set out herein above, the impugned order dated 21st November 2024 passed by the learned Adhoc District Judge-1 and Additional Sessions Judge, Pune below Exhibits 52 and 54 is quashed and set aside and the said Applications bearing Exhibits 52 and 54 are allowed.

8. Consequently the Petitioners shall be released on bail in terms of order dated 11th May 2022. All concerned shall take steps to release the Petitioners on bail in accordance with law expeditiously.

9. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

10. Although the Writ Petition is disposed of, place the Writ Petition for reporting compliance of this order on **30th June 2025**.
To be listed first on board.

[MADHAV J. JAMDAR, J.]

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