

RCC No. 174/2018
State Vs Sahebsingh and others
CNR No. MHPA140009342018

Order Below Application at Exh. 29

1. This application is filed by accused No.5 namely Pandeeet Bapurao Gaikwad for grant of bail under Section 437 of the Code of Criminal Procedure. Perused the entire record and say given by the learned APP. Heard, the learned counsel fro accused and learned APP at length.

2. The applicant/accused averred that accused persons had filed an application at Exh.6 for grant of bail before this Court. The said application was allowed on 16/10/2018 and accused persons were directed to furnish personal bond of Rs. 20,000/- with one solvent surety in the like amount, each. Thereafter, accused No.1 to 4 furnished surety as per the order of bail. The present applicant/accused No.5, belong to poor family and therefore, he failed to arrange for the solvent surety of Rs.20,000/-. Accused is indigent person. The present applicant/accused is in jail since long. The charge sheet is filed against accused persons. The offences against accused persons are triable by the Magistrate. Therefore, the accused prayed for bail. He further averred that the present application may be considered as fresh bail application.

3. Per contra, the learned APP strongly opposed the application and submitted that the accused is already ordered to be released on by the Cort. Therefore, application is not tenable in the eye of law.

4. Before switching over to the discussion, it is necessary to have a bird eye view of the facts and circumstances of the case in hand. The accused persons stands prosecuted for the offence punishable under section 461, 457 and 380 read with Section 34 of the Indian Penal Code. The accused persons were arrested and produced before the Magistrate on 11/10/2018 and they were remanded to police custody till 15/10/2018. Thereafter, accused persons were taken into MCR. On 16/10/2018, accused persons were directed to release on bail on executing personal bond of Rs. 20,000/- with one solvent surety in the like amount, each. The accused No.1 to 4 were released on bail as per the said order. However, accused No.5 Pandeet failed to avail the bail order and he is in jail since 15/10/2018. The record shows that no efforts are taken by him to furnish the surety as per the order of bail dated 16/10/2018.

5. In the case of *Swan Kher Gulsan And Others vs Assistant Collector Of Customs*, reported in, 1993 (1) MhLj 888, His Lordship has observed that an application for reconsideration of quantum is basically on part with a fresh application for bail. Where the accused has been uable to avail of the earlier bail order, he is in custody and the change of circumstances due to the lapse of time are factors pon which the Court must and can consider the release of the accused de novo, but where the offence is serious, such as in the present case, and the complaint has not yet been filed, the grant of bail at the early stage is virtually a concession.

6. In the case in hand, the record clearly shows that accused No.5 failed to furnish the surety as per the order of bail dated 16/10/2018. Therefore, it goes without saying that accused No.5 have no means to avail

the order of bail. He is languishing in jail since 15/10/2018 due to his poor financial conditions. Therefore, as observed by His Lordship, in the case of *Swan Kher* cited supra, the present application for bail by accused No.5 Pandeet is a fresh application for bail after the change of circumstances.

7. Thus, the conspectus of the above discussion is that the accused No.5 Pandeet is liable to be released on bail. Hence, I pass following order.

ORDER

1. Application is allowed.
2. Accused No.5 Pandeet Bapurao Gaikwad shall be released on bail on P.B. and S.B. of Rs.15000/- with one surety in the like amount.
3. Accused to submit his detail address proof.

Date : 23.01.2019
Purna

Sd/-
(T. H. Shaikh)
Judicial Magistrate F.C.
Purna