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

CRIMINAL BAIL APPLICATION NO. 2777 OF 2022

Mahipati Antu Jadhav

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr.Hrishikesh R. Chavan, Advocate for the Applicant.

Mr.N.B.Patil – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 8th FEBRUARY 2023

P. C. :-

1. I have heard learned Advocate Shri.Hrishikesh Chavan for the Applicant and learned APP Shri.N.B.Patil for the Respondent-State on more than one occasion.

2. He has moved this Application on behalf of the Applicant on the basis of the scheme titled as 'Release_UTRC@75' framed by National Legal Services Authority. There are various categories. He placed reliance on Category No.16 which says *'Those undertrials who are above 65 years of age'*.

3. He has taken me through various categories as per the scheme. Broadly, the categories can be divided into two divisions. One is the persons who are convicted and who are languishing in jail and second is those who are waiting for the turn for the trial. Amongst the undertrial prisoners, there are various categories depending upon the nature of offence, type of punishment, medical health, gender, age group. There are

certain categories which nowhere says about the nature of offence or period of their detention as an undertrial prisoner. The present category is one of such category which only mentions about the age of undertrial prisoner.

4. Learned Advocate vehemently submitted that the present Applicant is above 65 years of age and he is of 71 years age and he fits in that category. According to him, his Bail Application was rejected by the Sessions Court and now, this Application is moved in view of the decision of the High Court Legal Services Committee. According to him, while deciding such request, if merits of the matter are considered, then it will defeat the purpose of that scheme. Whereas, according to learned APP, the merits of the matter need to be considered and if they are not considered, then many undertrial prisoners will be released on bail irrespective of merits of the matter.

5. I have perused the order passed by the Sessions Court. In Para No.4, he has discussed about the allegations against the present Applicant and the offence is of Section 302 and there was an attempt to kill four witnesses. The learned Additional Sessions Judge rejected the Application considering the above said merits.

6. Prior to passing the order, this Court tried to seek some clarification from the learned Member/Secretary – MSLSA in respect of clarification if any about the scheme. Though, learned Member/Secretary made certain correspondence, he could not place on record any clarification except giving the statistics of how many applications have been received by them and the steps taken by them.

7. The purpose of launching of the scheme is mentioned in the scheme itself. Considering the high proportion of undertrial prisoners, in continuation of the earlier measures taken by the NALSA, this scheme was

framed. There were several directions from the Hon'ble Supreme Court given in this behalf and they are referred in the scheme itself. We can gather the intention for framing of the scheme. The District and Sessions Judge is given certain responsibilities so also the Under Trial Review Committees has been given certain responsibility. As per that mechanism, the Authorities were supposed to take steps for release of the prisoners.

8. There are two aspects. One is moving the concerned Court for releasing on bail and other is passing an order of bail on their request. It is true that it is the discretion of the concerned Court ; whether to grant bail or not. Such discretion cannot be taken away by any act. So, we gather is that by framing of such scheme, the attention of the concerned stake holders is brought to the effect that in your district, there are certain prisoners who are languishing in jail for so many years. So, the attention of the stake holders is brought. One can say that the Authorities of DLSA and MSLSA were successful in bringing into the notice of this Court about the case of the Applicant. However, when the trial Court as well as this Court has considered the merits, the Applicant cannot secure bail considering the merits of the matter. So, I am not inclined to grant bail.

9. However, the issue cannot be left at this stage. Certainly, there is an occasion for the trial Court to issue certain directions. It is submitted that the trial has already started. In view of that, following order is passed :-

O R D E R

- (i) Application is rejected.
- (ii) The trial Court seized of the matter is directed to expedite the trial and complete it as early as possible.
- (iii) The trial Court also to consider the fact that the case before him involves a prisoner more than 65 years of age and for their early release, the scheme is framed.

10. With these directions, the Application is disposed of.
11. Office is directed to pay the fees to learned Advocate for the Applicant.

(S. M. MODAK, J.)