

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRI. BAIL APPLICATION NO. 691 OF 2020**

Sopan Ramesh Lanjekar .. Applicant

Vs.

The State of Maharashtra .. Respondent

None for the Applicant

Mr. Deepak Thakare P.P. a/w S.R.Shinde a/w S.V.
Gavand APP for the State

CORAM : A.M. BADAR, J.

DATE : APRIL 03, 2020

P.C.:

1. This is an application under Section 439 of the Cr.P.C. for seeking regular bail in CR No. 311 of 2019 registered with MHB Colony Police Station for offence punishable under Sections 420, 409 read with Section 34 of IPC.

2. None appeared for the applicant. This application was called out for hearing on 30.3.2020. This application was adjourned to 3.4.2020.

3. The learned Public Prosecutor submitted that there is nothing urgent which requires consideration of this Regular Bail Application at this point of time.

4. Vide Notice dated 26th March 2020, The Hon'ble The Chief Justice is pleased to nominate this court to hear extremely urgent judicial matters on the criminal side due to advised against congregation because of outbreak of Novel Corona Virus (COVID-19).

5. The World Health Organization has declared COVID-19 as a pandemic. As a result, the National Disaster Management Authority of the State was pleased to pass an order directing the Central Government as well as the State Governments and its Authorities to take necessary measures for curbing the menace of

outbreak of COVID-19. Several guidelines came to be issued by it. Accordingly, The Hon'ble Prime Minister announced Nationwide Lockdown from 25th March 2020 to 14th April 2020. The Ministry of Home Affairs invoked Section 6 of the Disaster Management Act, 2005 and issued an order directing implementation of measures by the State and its Authorities including restriction on movement of citizens, closure of all Offices, Factories, Shops and Establishments except essential goods and services. Legal action is being taken by Law Enforcing Agencies against the defaulters by resorting to Section 188 of the Indian Penal Code which deals with the offence of disobedience to order duly promulgated by a public servant.

6. Entire nation is facing the challenge of fighting the menace of COVID-19. Maharashtra is the most affected State of India where there is largest number of patients of COVID-19. Day by day number of such patients is multiplying. In Maharashtra, figure of confirmed infected patients is touching 500. Entire Western Maharashtra,

which is under territorial jurisdiction of the Principal Seat of this Court, is worstly suffering from this pandemic. Mumbai, Thane, Pune, Kolhapur, Sangli etc. are most contaminated districts by COVID-19. These districts are having largest number of patients.

7. In the extremely urgent category, the instant bail application is filed. The work of the Registry of this Court is virtually being run with bare minimum officials and almost all departments of the Registry are not functioning. In the wake of the current pandemic of COVID-19, this court is required to consider the urgency of any matter, taking into account the entire process of passing of the orders and also implementation and execution of the same. The term “urgency” or “urgent” is very subjective and needs to be weighed considering the situation of that particular time when the application is moved. The instant application is moved for bail at a time when the entire world is facing a pandemic and is trying to fight it out together by various means and modes. In this background, the only issue I

need to consider is whether this application for bail can be said to be “urgent” and any orders need to be passed ?

8. Now let us keep in mind the process undertaken after disposal of the bail application. The bail writ is required to be prepared by checking the record by the Registry of this court, in the event the bail application is allowed. Then, it is required to be sent to the concerned Sessions Court. The staff and officers of such Court are then required to process that bail writ after taking entry thereof in the Writ Register of the Sessions Court. Thereafter, the bail writ is sent to the concerned Court which can either be the Sessions Court or the Court of the Judicial Magistrate First Class of the concerned district. The staff working in that court is required to put the bail writ along with record before the Presiding Officer of such Court for further action. The proposed Sureties are required to apply for Solvency Certificate to concerned Revenue Authorities. Then, Sureties are required to apply to the concerned Court by collecting necessary documents for permission to

stand as Sureties. The Presiding Officer of such Court is required to verify Sureties. Entries in the Surety Register kept at the concerned Court are also required to be verified by the concerned staff for ascertaining fitness of a person for standing as a Surety. If everything is found in order, then the Presiding Officer of the concerned Court issues the Release Warrant. Such Release Warrant is then required to be sent to the concerned prison. The staff of the concerned prison then undertakes necessary formalities for releasing the prisoner in terms of the bail order. It is, thus, clear that several staff members, officers and the Presiding Officer of the concerned Court and other departments of the State are required to work on the bail writ, after its issuance by the court.

9. Because of Lockdown declared by the State, as mentioned in the foregoing paragraph, all Offices including Offices of the Court are virtually closed. By deputation of bare minimum staff extremely urgent business is being transacted. Processing a bail order and consequent release of an accused/convict, as

such, virtually amounts breaching the order of complete Lockdown. Putting several employees and officers to work, may put them to the risk of contracting COVID-19. In this view of the matter, I am of the considered opinion that unless extremely urgent situation for entertaining regular bail application is pointed out, mere fact that the accused is undergoing either pre-trial or post-trial detention, does not warrant entertainment of the regular bail application on the occasion of Lockdown declared by the State. The case in hand is not reflecting any such extremely urgent situation warranting entertainment of the regular bail application.

10. There is another difficulty in entertainment of regular bail application in the wake of pandemic. The entire Law Enforcing Machinery is focusing on implementation of the Lockdown throughout the State by virtually remaining on the field for 24 hours. This is being done for saving the entire nation from the pandemic. In such a situation, it is not advisable to insist the State to depute Police Officers for

instructing the Prosecutors by undertaking travel to the Office of the Public Prosecutor and attending the Court by leaving their territorial jurisdiction where their presence in such a situation is must.

11. It is also seen that while implementing order of complete Lockdown, Law Enforcing Agencies have to frequently deal with the problem of Law and Order, as several individuals or group of individuals are turning violent and disrupting the work of sanitisation as well as providing medical aid to the victims. There are incidents of assault on Nurses, Doctors, Para Medical staff and Police staff involved in combating the menace of COVID-19. Such anti-social elements are seen loitering here and there, thereby breaching the order of the Lockdown. In such a situation, presence of 100 percent members of Police Force on the field, rather than in the Court, is absolutely essential for a limited period of Lockdown. This is necessary in the interest of the Society and Nation. Unless extreme emergent case is made out, they cannot be asked to spent their time in

defending regular bail applications.

12. For enforcement of the Lockdown, boundaries of almost all districts are sealed. So far as Mumbai is concerned, it is reported that several areas are also sealed. As such, even if a prisoner is released on bail, it may not be possible for him to reach to his destination without risking his life due to outbreak of COVID-19. In this situation, the prisoner by remaining inside till completion of lockout period will help and save the life of many others. But in case he is released on bail at this time, he will endanger his own life along with life of many others. In this scenario, the prime and the only urgency this court is required to take into consideration or to look into, is how to save lives of people, be it prisoners or public, and by way of not entertaining this application at this point of time, this court will only strengthen and maintain the social distancing which is the real need of the hour. Moreover, all public transports and trains are virtually not functioning. This is also a relevant reason for not entertaining regular bail application

in the event of national disaster because of outbreak of COVID-19.

13. At this juncture, it is apposite to note observations of the High Court of Rajasthan Bench at Jaipur in the matter of **Shahrukh S/o. of Juharu Khan vs. State of Rajasthan**¹, the relevant paragraphs of which read thus :

“1 Preeminence is always given by the Courts to Bail applications, applications for suspension of sentence in Appeals and Revisions but as to whether the same fall within the category of "extremely urgent matters" and should be taken up at a time when the entire Country, except essential services, is under lockdown is the moot question.

2 Bail Applications, Appeals under SC/ST Act, Revisions and Appeals with applications for suspension of sentence are listed in the category of urgent matters. When the entire Country except essential services is under closure, whether the above would fall within the

1 S.B.Criminal Miscellaneous Second Bail Application No.17767 of 2019

category of extremely urgent matters is the moot question.

3 It is known fact that WHO has declared COVID-19 as a pandemic. National Disaster Management Authority Government of India in exercise of the powers under section 6 (2)(i) of the Disaster Management Act, 2005 (hereinafter referred to as 'the Act') has issued order dated 24.3.2020 directing Ministries/Departments of Government of India, State Governments and State Authorities to take measures for ensuring social distancing so as to prevent the spread of COVID-19 in the Country. National Executive Committee has issued guidelines on the measures to be taken by the Ministries/Departments of Government of India, State/Union Territory. Government and State/Union Territory Authorities for containment of COVID-19 epidemic in the Country.

4 The guidelines annexed to Order No. 40-3/2020 DM-1(A) is reproduced hereunder:-

“Whereas, the National Disaster Management Authority (NDMA), is satisfied that the country is threatened with the spread of COVID-19 epidemic, which has already been declared as a pandemic by the World Health Organisation, and has considered it necessary to take effective measures to prevent its spread across the country and that there is a need for consistency in the application and implementation of various measures across the country while ensuring maintenance of essential services and supplies, including health infrastructure;

Whereas in exercise of the powers under Section 6(2)(i) of the Disaster Management Act, 2005, the National Disaster Management Authority (NDMA), has issued an Order no.1-29/2020-PP (Pt.II) dated 24.03.2020 directing the

Ministries/Departments of

Government of India, State/Union Territory Governments and State/Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country;

Whereas under directions of the aforesaid Order of NDMA, and in exercise of the powers, conferred under Section 10(2)(I) of the Disaster Management Act, the undersigned, in his capacity as Chairperson, National Executive Committee, hereby issues guidelines, as per the Annexure, to Ministries/Departments of Government of India, State Union Territory Governments and State/Union Territory Authorities with the directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from 25.03.2020.”

10Notification issued by the High Court on administrative side cannot limit the powers of the Court to pass judicial orders. If the direction is to be adhered to than the Court is to either allow or adjourn the matter. If the bail application/appeal under ST/ST is allowed, the order is to be sent to the court below, sureties have to appear before the court below and advocates presence is required to identify the sureties. Release order has to be sent to the jail with the court staff.

11 If application for suspension of sentence is allowed the order is to be produced before the Trial Court which has passed the sentence. Presently in each District limited number of Courts for limited time are functional to deal with exceptional urgent matters, in that situation for attesting the bail bonds staff of the concerned Trial Court is to be requisitioned for tracing out the file as surety bonds have to be furnished in the concerned Court file. Thus release of one accused or convict shall risk the life of many and would

adversely affect the measures taken by the State for complete lockdown.

12 It is true that Right of liberty is a fundamental right and Citizens are free to move anywhere in the country but reasonable restrictions have been imposed due to the emergent situation to prevent the spreading of COVID-19 virus. The entire country is under lockdown.

13 Release of an accused or convict at the cost of breaching the order of lockdown and at the cost of risking lives of many cannot be considered to fall within the category of "extreme urgent matter." It is also relevant to note that Rajasthan High Court has Holi, Dashera and Winter vacations ranging from few days to few weeks during which period also Bail applications and applications for suspension of sentence are not taken up by the Court."

14. In this view of the matter there is no

question of entertaining this application today.

15. Put up after completion of lock-down period and after resumption of the working of the Court.

16. Parties to act on an authenticated copy of this order.

[A.M. BADAR, J.]

