

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO.1738 OF 2023**

Ajay Rajaram Hinge ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Manoj Mohite, Sr. Advocate a/w Sachin Arude a/w
Ms. Priyanka Chavan a/w Shailesh D. Chavan for the
Applicant.

Mrs. Veera Shinde, APP for the State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 28, 2023

ORAL ORDER:

1. This is an application for bail under section 439 of the code of criminal procedure that has come before me after an earlier bail application was rejected by a co-ordinate judge of this Court (Coram: Bharti Dangre, J.).

2. A principle of law has become settled by a series of decisions of the Apex Court and this Court that a subsequent bail application should invariably be placed before the same learned Judge of the High Court, if available, who has heard and disposed of the earlier application. [See. **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan & Anr.**, reported in (1987) 2 SCC 684; **State of Maharashtra Vs. Captain Buddhikota Subha Rao** reported in 1989 Supp (2) SCC 605; **Harjeet Singh @ Seeta Vs. State**

of Punjab & Anr. reported in (2002) 1 SCC 649; **M. Jagan Mohan Rao Vs. P.V. Mohan Rao and Anr.** reported in (2010) 15 SCC 491; **Jagmohan Bahl & Anr. Vs. State (NCT of Delhi) and Anr.** reported in (2014) 16 SCC 501; **M/s Gati Limited Vs. T. Nagarajan Pirmiajee & Anr.** reported in Criminal Appeal No.870 of 2019; **Menino Lopes Vs. State of Goa** reported in 1994 Mh.L.J 1803; **Digambar OManohar Satam Vs. State of Maharashtra** reported in 2013 SCC Online Bom 1154.]

3. Though there is no paucity of precedents covering the principle directly as the principle appears to have been settled as a result of a series of decisions of the Supreme Court that a subsequent bail application should invariably be placed before the same learned Judge of the High Court, if available, who has heard and disposed of the earlier application, however, administrative order passed by the then Hon'ble Chief Justice of this Court on 18th June 2019, directing subsequent bail application to be placed before the Roster Bench when the application pleads change in circumstance, necessitates decision on the course to be followed by by accused who files second or successive bail application.

4. The Chief Justice of the High Court has the constitutional power to determine which Judge in each case is to sit alone and which Judges of the Court, whether with or without the Chief Justice, are to constitute the Division Bench. The power of assignment of judicial business amongst the Judges of the High Court, whether sitting singly or in Division Bench, is entrusted by law to the Chief Justice. The Judge derives power to deal with and

decide the cases or class of cases assigned to him by virtue of the assignment of work made by the Chief Justice.

5. Accordingly, the then Chief Justice on 18th June 2019, considering orders dated 10th June 2019 passed in Anticipatory Bail Application No. 2209 of 2018 and order dated 12th June 2019 passed in Criminal Application (BA) No. 365 2019, both referring to the judgment in the case of **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan & Anr.**, (1987) 2 SCC 684, passed an administrative order, para 3 and 4 of the said order reads as under,

“3. The said decision holds that successive applications seeking bail or anticipatory bail without any new factor or circumstance having cropped up should be placed before the bench which dealt with the earlier application because if permitted to be disposed of by different Judges, there would be conflicting orders and a litigant would be pestering every Judge. Meaning thereby if the second bail application does not plead a new factor or circumstance having cropped up, only then would it be required to be placed before the bench which had disposed of the earlier bail application. But, if a change in circumstances or a new factor having cropped up is pleaded, the application can be considered by the Judge to whom the Roster is assigned.

4. The bail application(s) accordingly be placed before the Roster Bench, and the Roster Bench would consider whether the application placed before it pleads a change in circumstances or a new factor having cropped up. If it is so pleaded in the application, the learned Judge shall decide the same and if no such pleading is made. By judicial order, it could be directed that the application be placed before the Judge who had dealt with the previous bail application.”

6. On an overall consideration of the 18th June 2019 order, it appears that the effect of the order was to apply to the Criminal Application (BA) No. 365 2019 referred to in the order. It is

apparent that the said order was in relation to the subject matter of the bail applications referred before the Chief Justice. The order, dated 18th June 2019, was not in the nature of standing order directing course to be adopted for all future bail applications pleading material change in circumstances. The life of the order dated 18th June 2019 ended with a decision in Criminal Application (BA) No. 365 2019.

7. It needs to be noted that the right to file successive bail application accrues to the applicant only on existence of a material change in circumstances. The sine qua non for filing subsequent bail applications is a material change in circumstance. A material change in circumstances settled by law is a change in the fact situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete. However, change in circumstance has no bearing on the salutatory principle of judicial propriety that successive bail application needs to be decided by the same Judge on merits, if available at the place of sitting. There needs to be clarity between the power of a judge to consider the application and a person's right based on material change in circumstances. A material change in circumstance creates in a person accused of an offence right to file a fresh bail application. But power to decide such subsequent application operates in a completely different sphere unconnected with facts of a case. Such power is based on the well-settled and judicially recognized principle that if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders, and the litigant would be

pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time and that judicial discipline requires that such matter must be placed before the same Judge, if he is available, for orders. The satisfaction of material change in circumstances needs to be adjudicated by the same Judge who had earlier decided the application. Therefore same Judge needs to adjudicate whether there is a change in circumstance as claimed by the applicant, which entitles him to file subsequent bail application.

8. At this stage, it is necessary to refer to the standing order passed by the Hon'ble Chief Justice on 29th February 2008. The said order reads as under :

“STANDING ORDER

The Hon'ble the Chief Justice has been pleased to direct as under:

The second and successive bail application by a particular accused/applicant is placed before the same Judge who had entertained/ rejected the first/earlier bail application filed by the same accused, where the Hon'ble Judge holding the regular assignment directs the matter to be so placed before the Judge, who had entertained/ rejected the earlier bail application.

High Court, Appellate Side,

Date: 29th February, 2008

By order,
s/d
(C.V. Bhadang)
Registrar(Judl-I)”

9. This Court in **Digambar Manohar Satam Vs. State of Maharashtra** reported in 2013 SCC Online Bom 1154, relying on the said standing orders and the judgments of Apex Court in the case of **Shahzad Hasan Khan Vs. Ishitaq Hasan Khan & Anr.** reported in (1987) 2 SCC 684 held that the proper course is to place the application before the same Judge who had decided the application earlier, particularly when the same Hon'ble Judge is available and is having sitting at the bench. No material is available on record that the standing order dated 29th February 2008 is no longer in force, has ceased to have effect, or is subsequently modified or recalled. The said standing order is in consonance with the principle of judicial propriety that successive bail application needs to be decided by the same Judge on merits, if available at the place of sitting. Therefore I have no hesitation in holding that the standing order dated 29th February 2008 is still in force and holds the field.

10. On consideration of the consistent view of the Apex Court, which is binding on the High Court and all other Sub-ordinate Courts under Article 141 of the Constitution of India, the order dated 18th June 2019, passed by the then chief Justice being restricted to the individual case referred and the standing order dated 29th February 2008, referred by single Judge in the case of **Digambar Manohar Satam Vs. State of Maharashtra** reported in 2013 SCC Online Bom 1154, in my opinion, the proper course for the applicant would be to move the same learned Judge who had earlier permitted the applicant to withdraw the application and, in that context, dismissed the application.

11. Office to place the application before the same Judge.

(AMIT BORKAR, J.)