IN THE COURT OF SPECIAL JUDGE NIA FOR GREATER BOMBAY
AT MUMBAI
ORDER BELOW EXHIBIT NO. 563
IN
SPECIAL CASE NO. 414 OF 2020
ALONGWITH
SPECIAL CASE NO. 871 OF 2020

Anand Teltumbde … Accused No.10
Vs.
National Investigation Agency ...Prosecution

Learned Advocate Mr.Sathyanarayanan for accused No.10.
Learned SPP, Mr.Prakash Shetty for the NIA

CORAM : HIS HONOUR SPECIAL JUDGE
SHRI. Dinesh E. KOTHALIKAR (C.R.NO.25)
DATED : 1st December, 2021.

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(DICTATED AND PRONOUNCED IN OPEN COURT)

ORAL ORDER

. The applicant has filed instant application for grant of interim bail on humanitarian ground.

2. It is urged in the petition that the applicant is in custody from 14/04/2020. According to him he came to know that his brother Milind Teltumbde is killed on 13/11/2021 at Gadchiroli. His mother is aged over 90 years and therefore at such a moment of bereavement in the family, presence of the applicant by the side of his mother and other siblings would be of great moral support. Therefore, it is prayed to grant interim bail for the period of 15 days from 04/12/2021.

3. The application has been contested by filling reply Exh.572. In its reply prosecution has submitted that there is ample evidence against the applicant showing his involvement in the alleged offence.

4. The prosecution has contended that offences alleged to have been committed by the applicant are very serious in nature and, as such, he does not deserve the concession of bail. It is averred that the application submitted by the applicant for bail, has already been rejected by this court on merit. Therefore the application can not be considered. Hence, it is prayed for rejection of the application.

5. I have heard the submissions made by the learned advocate Mr. Sathyanarayanan for the applicant and learned SPP Mr. Prakash Shetty.

6. During the arguments it has come to the notice of this Court that the regular bail application has already been rejected by this Court on merit and said order has been challenged by the applicant before the Hon'ble High Court and the same is still pending. Therefore, this court has made a query with learned advocate for the applicant on the point of maintainability of the petition for interim bail before this court. In reply to the query , learned advocate for the applicant has submitted that the previous bail application was not filed on the grounds which have been pleaded in the present application. Therefore, he would claim that the application for interim bail before this Court is very well maintainable .

7. On the point of maintainability of the application for

interim bail, when the appeal challenging the order of rejection of bail is pending before the Hon'ble High Court, reference with benefit can be made to the judgment of Hon'ble Bombay High Court in the case of Narendra Bhaskar Patil Vs The State of Maharashtra in Criminal Application No.3994 of 2014 decided on 4th August, 2014. In the said case the Hon'ble Division Bench has considered this aspect and laid down the law as under;

> "In any case, when the previous application filed for bail was rejected by this Court on merits and when the bail was refused by Hon'ble Apex Court also and regular bail application was pending in this Court, the application for temporary bail was not tenable before learned Special Judge. When the previous applications were rejected by this Court and bail was refused by Apex Court also, it was necessary for the learned Special Judge to ascertain first whether such application was tenable before him. Writs of the matters disposed of by this Court and Supreme Court are ordinarily sent to the concerned Court, trial Court for noting and also for compliance and they are tagged with the main proceeding. Thus, even if there was no mention in the application filed by present accused about the previously decided bail applications by this Court or the Apex Court, it was necessary for the learned Judge of the Special Court to go through those writs and copies of orders. The order made by the learned Special Judge does not show that such attempt was made by it, even when the accused was behind bars in a case of year 2012. The learned counsel for the applicant placed reliance on the case reported as (2009) 4 SCC 437 [Lal Kamlendra Pratap Singh Vs. State of U.P. and Ors.]. In this case, the Apex Court has referred the previously decided case and has made some observations with regard to the tenability of the application for temporary bail and it is observed that such application can be filed in bail application. The power of Court to grant

> temporary bail is a part of its powers to grant regular bail under the provisions of sections 437 and 439 of Cr.P.C. In view of this position of law, the accused could have filed application for temporary bail in the bail application which was pending in this Court. Otherwise also even for the relief of temporary bail, the accused ought to have filed the application in this Court as the previous bail application was dismissed by this Court on merits. It is nothing but fraud on the system. For this reason also, the order made by the learned Special Judge is illegal and it cannot sustain in law."

8 Upon perusal of the aforesaid judgment it is crystal clear that when this court had already refused to exercise discretion in favour of the applicant and that the applicant has challenged said order before the Hon'ble High Court and that said matter is still pending, the applicant is not supposed to file application before this Court. Thus, I conclude that the application for interim bail before this court, is not tenable.

9 For the forgoing reasons, since this court has concluded that the interim bail application before this court is not maintainable, it deserves to be dismissed. Resultantly, I pass following order;

ORDER

Application Exh.563 is hereby rejected.

(Dinesh E. Kothalikar)
Special Judge, NIA
City Civil & Sessions Court,
For Greater Bombay

Date : 01.12.2021

Dictated on : 1.12.2021
Typed on : 1.12.2021
Signed on : 1.12.2021

" CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"

UPLOAD DATE AND TIME : 2.12.2021 AT 05.12 p.m.
NAME OF STENOGRAPHER : Mrs. Prajakta K. More

NAME OF THE JUDGE	HHJ SHRI.D.E.KOTHALIKAR (C.R.No.25)
Date of Pronouncement of Order	1/12/2021
Order signed by the P.O. On	1/12/2021
Order uploaded on	2/12/2021