

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

**LD VC BAIL APPLICATION NO.49 OF 2020**

Mahesh B. Patil ... Applicant  
Vs.  
State of Maharashtra ... Respondent

**WITH  
LD VC INTERIM APPLICATION NO.70 OF 2020**

Shri Kunal Dinkar Patil ... Applicant  
Vs.  
State of Maharashtra ... Respondent

-----  
Mr. Ghanshyam Upadhyay i/b. Mr. Prakash Salsingkar, advocate for the applicant.  
Mr. S.V. Gavand, APP for State.  
Mr. Sachin Thorat for the Intervenor.  
-----

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATE : 15<sup>th</sup> MAY 2020.**

**PC. :**

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 The applicant herein is an accused in Crime No. 707/2017 dated 22/12/2017 registered with Manpada Police Station, Dombivali, District Thane, for offences punishable under section 120B, 302, read with 115 of the Indian Penal Code and under section 3 read with 25 of the Indian Arms Act. The applicant had filed Bail Application No. 896 of 2018 in this Court, which was rejected by an order dated 1/8/2018 on merits. This Court

(Coram : A.S. Gadkari, J) had considered the merits of the matter and had discussed the material against the applicant in detail. At that stage, it was submitted by the learned Counsel for the intervenor that there are eye witnesses in the present case and in one of the cases where the accused is being prosecuted under section 302 of the Indian Penal Code. The trial was in progress. This Court had observed that there are four witnesses, who have in an unequivocal term stated about the conspiracy hatched by the applicant and co-accused Sujit Nalawade in the office of the applicant with Vijay Menbansy. Be that as it may, the subsequent application seeking enlargement on bail was withdrawn. The order dated 1/08/2018 was impugned before the Supreme Court and the same was rejected.

3. As on today, it is the contention of the applicant that he deserves to be enlarged on bail in view of the directions/orders of the High Power Committee which were convened through the Maharashtra State Legal Services Authority functioning under the Chairmanship of the Hon'ble the Chief Justice and in view of the same the applicant has prayed for interim bail for 45 days in the light of binding guidelines.

4. At the threshold, learned APP has submitted that the application seeking enlargement on bail was rejected on merits and this would be a subsequent application.

5. The learned Counsel for the applicant has placed reliance upon the guidelines dated 14/5/2020. It is submitted that the applicant is not being prosecuted under any special act and therefore, the applicant deserves to be enlarged on bail. It is also submitted that the case of the applicant does not fall into any of the exceptional cases carved out by the said guidelines.

6. However, the guidelines read as follows :

“It is clarified that rest of clauses (iv) to (x) of the decision dated 25/3/2020 of this Committee shall apply and shall form the part of the present decision.”

7. In view of this, it would be necessary to read the guidelines dated 25/3/2020. The guidelines of 25/3/2020 read as follows :

“The prisoners who fall in the class or the category spelt out by this decision will be entitled to be released in accordance with law in considering every case for such reliefs, the nature of the offence and severity of the offence shall be considered. The possibility of the prisoner committing offence in case of temporary reliefs (such as habitual offenders or likelihood of his/her absconding should also be considered as important tests to decline such request for temporary release.”

8. The learned APP has submitted the list of offences registered against the present applicant. The applicant is being prosecuted. That the applicant is being prosecuted in Crime No.97 of 2007 for offence punishable under section 302 of the Indian Penal Code. The case is pending and is registered as Sessions Case No. 150 of 2007. Besides that, the applicant is also charge-sheeted and prosecuted for serious offences. The

applicant is charge-sheeted in 17 cases. Preventive measures have been taken against the applicant on more than 7 occasions and that the applicant has created a terror in the said area. It is submitted by the learned APP that the applicant is a habitual offender.

9. At this stage, learned Counsel for the applicant has drawn the attention of this Court to the definition of “habitual offender” as per Habitual Offenders Act, 1959 and submits as follows :

“Habitual offender means any person who since his attaining the age of 18 years during any consecutive period (I) whether before or after commencement of this Act or partly before or partly after such commencement) of five years has been sentenced on conviction on not less than three occasions to a substantive term of imprisonment for one or more of the scheduled offences committed on separate occasions, being offences which are not so connected together as to form parts of the same transaction.

10. According to the learned Counsel for the applicant, it cannot be said that the present applicant is a habitual offender.

11. Black's Law Dictionary defines “Habbitual Offender” as a recidivist. A recidivist is one who has been convicted of multiple criminal offences usually similar in nature; “a repeat offender”. This has to be read in consonance with recidivism, which indicates a tendency to relapse into a habit of criminal activity or behaviour. By this definition, it would be more than clear that the applicant has criminal antecedents and that he is into a

habit of indulging into criminal activities and that it is not possible for the State machinery to control his activities, despite the fact that preventive action has been taken against him on several occasions.

12. Hence, in view of the guidelines dt. 25.3.2020 the applicant cannot claim benefit by the guidelines dated 14.5.2020. It would be necessary to also take into consideration the merits of the matter, the gravity of the offence and the attitude of the accused of indulging into criminal activities despite preventive measures, the applicant cannot take benefit of the circular dated 14/4/2020 and does not deserve temporary bail. Hence, the application stands rejected.

**(SMT. SADHANA S. JADHAV, J.)**