

~~WARRANT~~

BAIL ORDER - 141
WARRANT - J-07-
110/02

BAIL ORDER

16/4/03

Dated 13th August, 2002.

Order passed on bail application Ex.20 filed
by accused Sanjay Hariram Agrawal in Crime
No.110/02 u/S.420,406 r/w S.34 of I.P.C.

Wardha police has registered offence against accused vide Crime No.110/2002 of the offence punishable u/S.420,406 r/w S.34 of I.P.C. The accused was arrested on 13.06.2002. For some period he was remanded in police custody and thereafter accused is in magestrial custody. Investigation is not completed and charge sheet is not received till today. Punishment for the offence punishable u/S.406 is three years or with fine or both. As per Section 167(2)(a) of Cr.P.C., if investigation is not completed and charge sheet is not received within 60 days, if the offence is punishable below 10 years, then accused is entitled to get bail. In this case, accused Sanjay Hariram Agrawal was arrested on 13.06.2002 and he is in custody from the date of arrest. Investigation is not completed and charge sheet is not received within period of 60 days. Therefore, accused is entitled to get bail. The offence is serious. Therefore, it is necessary to impose certain conditions. Hence, I pass the following order.

Order

Accused Sanjay Hariram Agrawal is hereby released on furnishing solvent surety of Rs.5 lacs and personal bond of same amount in Crime No.110/2002 u/S.420,406

r/w S.34 of I.P.C. with condition that he should not tamper with the prosecution witnesses; and that he should not leave India without permission of this Court.

Dt/- 13.8.2002.

K. Narwade
13-8-2002
(K.G. Narwade)

Chief Judicial Magistrate, Wardha.

Charge sheet was 2 so. pp

*Copy of order
1 sheet 2 pages*

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7/1/200

ORDER PASSED ON BAIL APPLICATIONS EX.96 and
EX.99 FILED BY ACCUSED SANJAY HARIRAM AGRAWAL
IN CRIME NO.110/2002 AND 124/2002 IN REG.CRI.
CASE NO.573/2002; STATE OF MAHARASHTRA. -VS-
SANJAY HARIRAM AGRAWAL AND OTHERS, U/S.409,406
420 r/w S.34 of I.P.C. AND 138 of N.I.ACT.

The accused Sanjay Hariram Agrawal has filed these two applications with a prayer that he be released after furnishing cash security in stead of furnishing solvent surety. It is stated in applications that Court has passed bail order on 13.8.2002 and ordered that accused be released after furnishing solvent surety of Rs. 5 lac and personal bond of the same amount. It is stated by accused that accused is unable to furnish bail as per order dt.13.8.2002 because he is resident of Calcutta and he does not possess any immovable property. It is further stated in application that I.O. has already seized the bank account of accused and, therefore, accused has no sufficient amount and hence, he is not in a position to deposit ~~such~~ huge amount in the Court. The learned Advocates; Shri V.S. Chore and Shri S.K.Dubey submitted before the Court that accused is in a position to deposit cash amount of Rs.50,000/- and, therefore, they prayed that accused be released after depositing cash amount of Rs.50,000/-.

2. The learned A.P.P. Shri J.N.Vaidya for the State argued that this Court can not modify or change its own bail order dt.13.8.2002. He further argued that the applications filed by the accused deserve to be rejected.

9/11
16-4-02
Jm

3. Following are the points for my consideration.
1. Whether order passed by the court releasing the accused on bail dt.13.3.2002 required modification?
 2. Whether accused can be released on furnishing cash security in stead of bail?
 3. What order?

My findings to the above points are as under.

1. Yes.
2. Yes.
3. As per final order.

Reasons

Point Nos. 1 and 2.

4. It is important to note that accused Sanjay Hariram Agrawal was originally arrested by P.S.City Waraha in Crime No. 110/2002 u/s.406,420 r/w 34 I.P.C. on 13.6.2002. This Court granted police custody to him for some days and thereafter accused is in a magistrate custody. Police formally arrested him in Crime No.124/2002 for the offence punishable u/s.409,420 r/w 34 IPC and 138 of N.I.Act on 30.9.2002. It is important to note that police made investigation in both the crimes and filed one charge sheet in this Court on 18.11.2002. According to police both crimes bearing Nos. 110/02 and 124/02 are amalgamated and they filed only one charge sheet on 18.11.2002 against 13 accused persons.

5. It is important to note that all other accused are released on bail in this case. The Court has already passed bail order against the accused Sanjay Hariram Agrawal on 13.8.2002 because police have not filed charge sheet in the Court within 90 days from the date of arrest.

dh
16-4-2003
CJM

6. Now, the question before me is, whether accused can be released after furnishing cash security in stead of taking the solvent security/surety from the accused. It is important to note that police have not filed charge sheet within 90 days after the date of arrest of accused and, therefore, accused is entitled to release on bail as per Sec.167(2)(e)(ii) of Cr.P.C.. As charge sheet is not submitted within 90 days, accused has got right of bail as per above section and, therefore, Court has already passed bail order on 13.6.2002. The learned Advocates for accused submitted that accused is in jail since more than 10 months but no one is coming for taking his bail. They argued that accused is resident of Calcutta and police have seized his all bank accounts and, therefore, he has no huge amount to deposit in the Court. They further submitted that his friend is ready to deposit Rs.50,000/- as cash security and, therefore, they prayed that in the interest of justice accused be released after furnishing cash security of the amount of Rs.50,000/-. They argued that J.M.F.C. 1st Court Nagpur has already released the accused on furnishing cash amount of Rs.50,000/- in lieu of solvent surety in Criminal Case No.147/2002 of Crime No.101/2002. The certified copy of the order of learned J.M.F.C. 1st Court, Nagpur is filed on the record. As stated above, in this case bearing No.573/2002 all other accused are released on bail and only this accused Sanjay Agrawal is in jail since more than 10

AW Rawal
16-4-2003
CGM

months. He is not furnishing bail even though Court has passed order of bail on 13.8.2002 as the charge sheet is not filed by the police within 90 days.

7. Considering all the facts on record, I find that it is proper ~~to~~ ^{at} to release Sanjay Hariram Agrawal after furnishing cash security of Rs.50,000/- with condition that he should not left India without prior permission of this Court and he should not tamper the prosecution witnesses and he should attend the Court regularly. Hence, the order.

ORDER

The applications filed by accused Exhs. 96 and 99 are hereby allowed.

The accused Sanjay Hariram Agrawal be released on depositing cash amount of Rs.50,000/- in lieu of solvent surety in Reg.Cr.Case No.573/2002 which is filed on the basis of Crime Nos.110/02 and 124/02 with conditions that he should not leave India without prior permission of this Court and he should not tamper the prosecution witnesses and he should attend the court regularly.

Dt/- 16.4.2003.

K.G. Norwade
16/4/2003

(K.G. Norwade)

Chief Judicial Magistrate, Wardha.

Copy Charge rs. 150 P.P
Copy of Exh 96 & 99 order
(9 pages)

Truway
[Signature]
21-04-03
Asst. Superintendent
court of Chief Judicial Magistrate
WARDHA
21/4/03

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[Signature]
Hemant
21/4/03