

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL WRIT PETITION NO. 883 OF 2013

Rajesh S/o. Ratanlal Kale

...Petitioner

Versus

The State of Maharashtra and others

...Respondents

....

Mr S. G. Ladda, Advocate for the petitioner

Mr S. M. Jadhav, APP for respondent/State

Ms Sumita G. Gaikwad, Advocate for respondent No. 2

.....

**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 23RD, 2015.**

PER COURT: -

. The present application is filed by the original complainant in Crime No. 3020 of 2013, filed at Kranti Chowk Police Station, Aurangabad, against respondent No. 2, for offence punishable under Sections 7, 12, 13 (1) (d) read with 15 (2) of the Prevention of Corruption Act, 1988. It *prima facie* appears that, there has been a chequered history to the present case. On 5th March, 2013, the respondent No. 2 herein was arrested and produced before the Special Court at Aurangabad. The accused were remanded to the police custody on 7th March, 2013. On 7th March, 2013, when the respondent No. 2 was

produced before the Special Judge, it is alleged that the said respondent had extended threats to the present applicant, who happens to be the original complainant. After considering the submissions, the learned Special Judge had enlarged the accused on bail with a condition that they shall attend the office of Anti Corruption Bureau (in short "office of ACB") on 1st and 3rd Monday of each month between 10.00 am to 4.00 p.m. till further orders.

2. On 12th March, 2013, the complainant had filed an application before the Police Commissioner at Aurangabad, contending therein that, on 7th March, 2013 when the accused were produced before the Special Judge, he had raised his voice and had threatened the complainant of dire consequences. That, he had specially stated that, they would involve the complainant into a serious offence. The complainant had specially stated that, being aggrieved by filing of the complaint the accused has nurtured vendetta against the complainant and is likely to ventilate his grievance by taking revenge only to satisfy his personal vendetta. The said application appears to have been forwarded to other authorities including the then Home Minister of the State.

3. On 16th April, 2013, the Dy.S.P. of A.C.B. of Aurangabad, filed a report before the Special Judge, contending therein that, the accused have not abided by the order passed by learned Special Judge and that accused Gautam Gaikwad had not appeared before the office of ACB on 18th March, 1st April and 15th April of 2013. It is pertinent to note that, this was not in the form of an application seeking cancellation of bail for violation of the orders but was a communication to the Special Judge. In the meanwhile, on 21st May, 2013, the original complainant i.e. the present applicant had filed an application before the Special Judge, seeking cancellation of bail and praying that the accused be rearrested and sent to Jail and be tried as an under trial prisoner. The complainant had brought to the notice of the Special Judge that the accused Gautam Gaikwad has not attended the office of ACB and the said fact is reported to the Court on 16th April, 2013. That, the complainant had received the said information under Right to Information Act. From the averments made in the application filed by the complainant, it simply appears that the bail was sought to be cancelled on the ground that he was not attending the office of ACB as directed by the Court. On 12th June, 2013, the respondent No. 2 - Gautam Anna Gaikwad appeared in-person before the Court. He submitted that, he did not wish to file Vakalatnama to

represent him and further submitted that he does not want to say anything in support of the application filed by the complainant. Since the accused had appeared *suo moto*, the Court had kept the matter for final hearing. On 12th June, 2013, it seems that the Court had passed an order below Exh. 1 in Criminal Misc. Application No. 78 of 2013, wherein the Court observed that the accused appeared in-person, was shouting loudly against the complainant, investigating officer and police officers. He was requesting the Court to take him to the jail. That, the accused was persuaded by Ms Gaikwad to leave the Court and at that juncture, the learned Advocate Ms. Gaikwad informed the Court that, it *prima facie* appears that the accused is going through a stage of mental depression / mental derailment. The Court was also apprised of the fact that the accused is taking treatment for mental derailment and, therefore, his behaviour may be excused by the Court.

4. That, on 14th August, 2013, the Special Judge had considered an application seeking cancellation of bail on the ground that the accused had not attended the office of ACB as directed by the Court. The order dated 14th August, 2013 reads thus:

“..... 2. The bail granted to the

respondent/accused No. 1 – Gautam s/o Anna Gaikwad is hereby cancelled with direction to issue Bailable Warrant against him of Rs. 15,000/-”

5. The complainant had then filed an application below Exh. 12 in Criminal Misc. Application No. 78 of 2013 that, by allowing the application filed by the complainant the Court has cancelled the bail but instead of issuing Non-Bailable Warrant or rearresting the accused, the Court has issued Bailable Warrant in the sum of Rs. 15,000/-. The learned Special Judge has observed that, he had passed a detailed order upon perusal of record and after hearing submissions of the respective Counsel. It was observed that, considering prayer of the complainant, the bail granted to the accused was cancelled and bail bonds were also cancelled. The accused is released on bail and, therefore, he had not specially issued Non-Bailable Warrant however, special direction was given to issue Bailable Warrant in the sum of Rs. 15,000/-. The correctness and validity of the said order was challenged by the complainant. The learned Special Judge, by an order dated 13th September, 2013, has rejected the application filed by the complainant for cancelling the bail. The Special Judge had observed that bailable warrant was issued after cancellation of bail bonds and

that since the accused had appeared in pursuance of the issuance of bailable warrant, the accused was enlarged on bail. On 13th September, 2013, the Additional Sessions Judge had passed an order which reads thus:

“..... 2. Applicant / accused Gautam s/o Anna Gaikwad be released on P.R. and S.B. of Rs. 50,000/- (Rs. Fifty Thousands only) on condition to pay the forfeiture amount of Rs. 50,000/- (Rs. Fifty Thousands only) to which he jumped the bail and on usual terms and conditions as laid down in the order dated 07-03-2013.”

6. The learned Counsel for the applicant i.e. original complainant submits that, the procedure laid down in the Criminal Procedure Code has not been properly followed. The learned Counsel submits that, once the Court had arrived at a conclusion that for breach of condition the bail bonds stand cancelled, there was no question of issuing bailable warrant and that correct procedure would be either to take accused into custody or the said order could have been challenged in the higher Court. The learned Counsel submits that, since there has been violation of the procedure as contemplated by Code of Criminal Procedure, the order granting bail deserves to be quashed and set aside and that the accused needs to be taken

into custody. The powers conferred upon the Magistrate U/s 71 of Criminal Procedure Code are discretionary in nature. Section 71 speaks of discretionary powers of the Court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of warrant against him U/s 70 of Criminal Procedure Code. Upon perusal of the various orders passed by the Special Judge, this Court is *prima facie* of the opinion that, 'the order was wrongly worded'. In fact, pursuant to the notice issued by the Special Judge upon the application filed by the complainant, the accused had *suo moto* appeared before the Court. He had not submitted his say but was praying for taking him into custody. On that day, no concrete action was taken against the accused probably by considering the conduct of the accused before the Court. It is pertinent to note that the prosecution had not filed any application seeking cancellation of bail and the said fact was only brought to the notice of the Court. It would simply imply that the learned Magistrate had cancelled the earlier bail bonds, issued Bailable warrant and directed the accused to furnish fresh bail bonds. The complainant was aggrieved by the manner in which the prosecution was being conducted and, therefore, had also apprised the Court of the fact that the complainant has prayed for change of the APP. However, the

Court was not concerned with the appointment or cancellation of appointment of any particular prosecutor. The criteria for consideration of bail and cancellation of bail would be different. As far as cancellation of bail is concerned, it would be necessary to see as to whether the accused has committed breach of conditions and whether the same can be corrected. Thereafter, in that eventuality the accused is free to demonstrate before the Court that there was no intention to violate the conditions imposed by the Court. In the present case, the accused had demonstrated mental derailment before the Court. The question as to whether it was a genuine circumstance or that it was being put up in the said manner, was to be considered by the Court. However, taking into consideration the conduct of the accused and the submissions advanced by Ms. Sumita Gaikwad, learned Counsel, who was representing the accused, the Court had issued bailable warrant against the accused persons.

7. In the present case, this Court cannot be oblivious of the fact that the bailable warrant was issued and that it can be cancelled by the same Court on appearance of the accused and the Court has passed a right order. In fact, the Court had observed that the bail was cancelled for violation of the order but had proceeded to issue bailable warrant. It is a patent

irregularity, no doubt. However, the impugned order is passed on 14th August, 2013 and after a lapse of more than one and half year, it would not be appropriate for this Court to allow the application filed by the complainant seeking cancellation of bail on the ground that there had been breach of conditions. The learned Counsel appearing for the respondent No. 2 submits that, after the order was passed on 14th August, 2013, the accused is attending the office of the Anti Corruption Bureau and is cooperating with the investigation. This Court also cannot be oblivious of the fact that the investigation is completed and charge-sheet is filed in May-2014. Hence, it can be safely said that the applicant has not made out sufficient grounds to cancel the bail granted earlier. Hence, the application being sans merit, stands rejected.

(SMT. SADHANA S. JADHAV, J.)