

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 4 OF 2015

Dinanath Knojiya

.....Applicant

V/s.

The State of Maharashtra and another

....Respondents

Mr. Vincint D'Silva for Applicant

Ms. A. T. Jhaveri APP for the State.

Mr. Rohan P. Surve for Respondent no. 2.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 10th JUNE 2015

PC :

1) Heard. This is an application under section 482 Code of Criminal Procedure, 1973 seeking cancellation of bail granted in favour of respondent by Additional Sessions Judge, Thane vide order dated 16/08/2014.

2) It is the case of complainant that complainant had purchased certain tenements from respondent no. 2. According to applicant, respondent herein happens to be builder had shown certain documents to the applicant including map of building to be constructed and an agreement was executed between the parties on the basis of plans and other documents shown by respondent. Mira-Bhayander Corporation had observed that said tenements were not built

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with permission of Municipal Council and hence, said tenements were demolished on 03/09/2013. Applicant then filed F.I.R. against present applicant on the basis of which crime no. 137 of 2014 was registered at Navghar police station against respondent for offence punishable under section 420, 406, 506 r/w 34 of Indian Penal Code. Respondent herein had apprehended arrest and therefore had filed an application seeking pre-arrest bail before the Sessions Court which was registered as Criminal Anticipatory Bail Application No. 932 of 2014. Learned Sessions Court has perused the papers of investigation and other relevant documents and had observed that applicant herein had filed Regular Civil Suit No. 571 of 2006 and 883 of 2013. Learned Sessions Court observed that in fact complainant had filed Regular Civil Suit only after Corporation had demolished the said tenements. Learned Sessions Court has rightly arrived at a conclusion that dispute between the parties was of a civil nature and criminal law was set in motion. Learned Sessions Court had relied upon the Judgment delivered by Hon'ble Apex Court in the case of **Siddharam Mhetre** and had granted pre-arrest bail in favour of applicant therein. Hence, this application.

3) Learned counsel for the applicant submits that learned Sessions Judge

has not considered the provisions under section 438 of Code of Criminal Procedure, 1973 in its letter and spirit. According to learned counsel for applicant, custodial interrogation was imperative to find out about the identity of the office bearers of the Corporation who had granted permission for construction of the said tenements. According to learned counsel, there is no proper investigation and that learned Sessions Judge has not discussed all the parameters of section 438 of Code of Criminal Procedure, 1973 while granting anticipatory bail in favour of applicant.

4) As against this, learned counsel for the respondent submits that in fact while purchasing the said tenements/Galas, it was incumbent upon the applicant also to verify the genuineness of the project.

5) Learned counsel for the respondent submits that applicant (accused) had been granted pre-arrest bail by an order dated 16/08/2014 and after grant of pre-arrest bail, applicant (accused) has not tampered with the investigation, nor committed breach of any conditions imposed upon the applicant. Learned counsel rightly submits that parameters for grant of bail and cancellation of bail are totally different. Learned counsel has placed reliance on the Judgment of Hon'ble Apex Court in the case of **Hazari Lal Das Vs. State of West**

Bengal and another, 2010 (AIR) (SC) 1991 wherein, Hon'ble Apex Court has observed as under :

“9. In *Dolat Ram And Ors. v. State of Haryana* (1995) 1 SCC 349, this

Court held:

4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

6) Hence, application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)