

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.58 of 2015

IN

CRIMINAL APPEAL NO.851 of 2005

The State of Maharashtra

.. Appellant

Versus

Mohammed Afroz Abdul Razzak

.. Respondent

Mr. Deepak Thakre, APP for the appellant State.

Mrs. Anjali Iyer, Advocate for the respondent.

CORAM : ABHAY M. THIPSAY, J.**DATED : 7th AUGUST, 2015**

P.C. :

1 The respondent has been convicted of offences punishable under section 126 of the IPC read with section 120B of the IPC and sentenced to suffer Rigorous Imprisonment for 5(five) years and to pay a fine of Rs.10,000/- (Rupees Ten thousand only). Against the order of conviction and the sentence imposed upon him, the respondent has filed an Appeal being Criminal Appeal No.851 of 2005 which is pending before this Court. On the admission of the Appeal, by an order dated 17th November 2005, the respondent was released on bail by suspending the substantive sentence imposed upon him on certain conditions. One of the conditions imposed upon the respondent was to the effect that he shall report to the DCB CID, Crawford Market, Mumbai, once in a month on first Monday of every English calendar month between

10.00 a.m to 12 noon. Pursuant to the said order, the respondent did report to the office of the DCB CID till 1st December 2008. It is an admitted position that, thereafter, the respondent did not attend the office of the DCB CID. However, the Investigating Agency did not bring this to the notice of this Court, and did not take any steps in that regard. The respondent subsequently applied to this Court for return of his passport. When that application was heard, it transpired that the respondent had not been attending the office of the DCB CID after 1st December 2008. When this was revealed, the present application by the State seeking cancellation of the bail granted to the respondent has been made.

2 I have heard Mr. Deepak Thakre, learned APP for the State in support of the application. I have heard Mrs. Anjali Iyer, learned counsel for the respondent. I have gone through the counter affidavit filed by the respondent.

3 It is stated before me that during the pendency of the present application, the respondent has been reporting to the office of the DCB CID as per the conditions imposed by this Court, since February 2015.

4 It does appear that the respondent committed breach of a condition imposed upon him by this Court while releasing him on bail. At the same time, it also needs to be noted that he did comply with the said condition for a period of more than three years. What is significant is that after he stopped reporting to the office of the DCB CID, nothing was done by the State to bring the

matter to the notice of this Court or to have his bail cancelled. As a matter of fact, it is only when the respondent made an application for return of his passport that the fact that he was not reporting to the office of the DCB CID, was noticed by the State. In all probability, had the respondent not made the application, the State would not have even realized that the respondent had stopped reporting to the office of the DCB CID. In a way, the lapse of the respondent was condoned by the State.

5 Since now the respondent has been attending the office of the DCB CID, and has assured before me that he shall keep on attending the same as per the condition imposed by this Court, it does not seem proper to me to direct cancellation of the bail granted to him.

6 Nevertheless, since a default has, admittedly been committed by him, an appropriate penalty for the breach of the bond executed by him, needs to be imposed upon him.

7 By consent of the learned APP and the learned counsel for the respondent, it is also being directed that the Appeal shall be expeditiously heard.

8 In the result, the Application is rejected.

9 However, the respondent shall pay a penalty in the sum of Rs.5,000/- to be deposited by him in this Court within a period of two weeks towards the breach of a condition of the bond executed by him.

10 Hearing of the Appeal is ordered to be expedited.

11 The same be listed on board for final hearing on 1st
September 2015.

12 Application is disposed of accordingly.

(ABHAY M.THIPSAY, J)