

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 418 OF 2015

Dhanpat Jivraj Sheth	...	Applicant
vs.		
The State of Maharashtra & Anr.	...	Respondents

Mr.Rishi Bhuta,Advocate for the applicant
Mrs. P.P.Shinde, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 26th February, 2015.

P.C.

Heard. The applicant herein is challenging the order dated 16.2.2015 passed by A.C.M.M. 4th Court Girgaon, Mumbai, whereby the learned Court passed an order under Section 439(2) of Cr.P.C. and cancelled the bail granted in favour of the applicant on 6.2.2015.

2. It is the case of the prosecution that the present applicant was not shown as an accused in Crime No.25 of 2015 registered at V.P. Road Police Station for the offences punishable under Sections 420 and 411 read with Section 34 of Indian Penal Code. In the course of investigation, it was transpired that the applicant was also an accused in the said crime. Hence, the applicant had suo motu appeared before the Metropolitan Magistrate on 6.2.2015 and was enlarged

on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties and was directed to report the V.P. Road Police Station every Tuesday and Saturday between 6 p.m. to 9 p.m. till the filing of the charge sheet.

3. The applicant is a physically disabled person and has suffered 87% of disability to his lower extremities. The accused had attended the police station pursuant to the orders passed by the Magistrate. On 13.2.2015, the Investigating Officer PSI, Prashant Maruti Morkane, had filed an application seeking cancellation of bail before the Metropolitan Magistrate. The accused -applicant had appeared before the Court and had filed a reply in the said application on 16.2.2015. The learned Magistrate has observed that the I.O. had sought cancellation of bail on three grounds. The first ground is that other co-accused are to be arrested. Secondly, Muddemal property is to be recovered and thirdly, since his release on bail the accused had not co-operated in the investigation in any manner. The learned Magistrate has observed in para 7 that the I.O. had not issued any questionnaire to the accused demanding answers from him in writing. The learned Magistrate had rejected the grounds raised by the investigating officer. However, according to the learned Magistrate, at the time of issuing notice the Magistrate had directed the applicant to remain present before the Court on 16.2.2015. The applicant was absent till 1.35 p.m. and hence the bail was cancelled.

4. The learned counsel submits that on 16.2.2015, the advocate representing the applicant was present before the court and had filed an application for exemption. However, without considering the same, the bail was cancelled. This was not a fit case for cancellation of bail as the learned Magistrate had rejected all the three grounds raised by the investigating officer.

5. The learned counsel for the applicant submits that on 9.2.2015, the investigating officer had been to the house of the applicant and had been to Shree Nagar police station inspite of the fact that the applicant was enlarged on bail on 6.2.2015. The investigating officer is present in the Court. Initially, upon repeated enquiries by the APP, the I.O. had submitted that he has not indulged into such activity. However, when the Court was of the opinion that the station diary entry of Shree Nagar Police Station be called for, the I.O. has agreed that he had been to Shree Nagar Police Station to take help of Shree Nagar Police Station to arrest the applicant at midnight. The explanation given by the I.O. is that he was not aware that the applicant has been enlarged on bail by the Metropolitan Court on 6.2.2015. The I.O. has deliberately attempted to mislead the Court. There is no reason to disbelieve the contention raised by the applicant. The learned counsel further submits that the investigating officer had taken the parents and the kins of the applicant into custody only to secure his presence. It prima

facie appears that the investigating officer in the present case is biased against the applicant. However, since the investigating officer has tendered an unconditional apology, this Court is not inclined to pass any adverse orders against him. However, the D.C.P. Shall take note of this fact.

6. In view of the above facts and circumstances of the case, the order passed by A.C.M.M. 4th Court, Girgaon, Mumbai, dated 16.2.2015 is hereby quashed and set aside. However, the conditions imposed by the learned Magistrate shall remain in force till the filing of the charge sheet.

The Application is allowed and disposed of in the above terms.

(SMT.SADHANA S.JADHAV, J.)