

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
CRIMINAL APPLICATION NO.168 OF 2014

The State of Maharashtra ... Applicant
Vs.
Prashant Bhaskar Mhatre & Anr. Respondents

Mrs. Rutuja Ambekar, APP, for the Applicant-State.
Ms Vishranti Navale for Respondents.
Mr. Manojkumar Hubdal Prajapati, PSI, Thane, present.

CORAM: P.D. KODE, J.

DATED: JANUARY 8, 2015.

PC:

1. By this application prosecution seeks cancellation of bail granted to the accused / opponent Nos.1 and 2 by learned Additional Sessions Judge, Thane, in connection with C.R. No.187 of 2013 registered with Bhiwandi City Police Station, District – Thane, for the offences under section 307 r/w section 34 of the IPC, sections 3 and 25(1B) (A) of the Arms Act and sections 37(1) and 135 of the Bombay Police Act. The offence in question was registered regarding an incident which had occurred on 5.10.2013 in which the opponent No.1 is said to have allegedly fired a shot at victim from an Alto Car, which was then driven by the opponent No.2.

2. The only ground canvassed by learned APP in support of cancellation of bail granted is that while releasing the opponents on bail the learned Sessions Judge failed to take into consideration of there being antecedents of the opponent Nos.1 and 2. The prosecution in support of said contention has not filed the list of said antecedents with the present application nor even filed copy of say to such effect filed before the Court of Sessions revealing that such facts were then brought to the notice of the learned Sessions Judge. Having regard to it, it is difficult to take cognizance of it at the present stage. Even the grounds stated in the application reveals that the opponents were on bail for the said crimes. The said fact itself denotes the nature of material collected against the opponents in said crimes. Apart from it upon a specific query the learned APP submitted that prosecution has so far not taken any preventive proceedings against the opponents due to commission of the said earlier offences.

3. It is settled position in law that the parameters of granting bail and parameters of cancellation of bail stands on altogether different footing. The application does not reveal that after their release the opponents have misused their liberty. Having regard to it, it is difficult to perceive of any case there being made for cancellation of bail.

4. Though lastly, the learned APP took recourse to the submission that the opponents have not abided the condition of attendance of the bail. The perusal of the order reveals that the said attendance was to be given to Bazar Peth Police Station, Kalyan. No affidavit of any of the Officers from said police station is filed in support of such contention advanced nor any diary entries of the said police revealing that opponents had not attended have been filed.

5. The learned counsel for opponents submitted that opponents had attended the said police station up till month of March, 2013 and thereafter had not attended in view of the Officer from the said police station having told the opponents that they should attend thereafter whenever they would be called for giving attendance. Today learned counsel for the opponents tendered in the Court zerox copy of diaries regarding the attendance given accordingly which are marked as 'X' and 'X1' for identification.

6. Even assuming that the opponents had not given attendance as ordered still it is difficult to perceive that merely because of the said reason the bail granted to them would deserves to be cancelled. It appears accordingly as it is settled legal position in view that the bails are required to be cancelled only in event of misuse of it being reported to the Court. No such case is being made out.

7. Curiously enough since the conditions were imposed for attendance for breach thereof the prosecution should have approached the said court firstly and not directly to this Court. The prosecution having not acted accordingly would be an another ground for not entertaining this application on such count.

8. Resultantly the application dehors merit, stands dismissed.

(P.D. KODE, J.)