

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 536 OF 2013

Sirajuddin Mohammad Yusuf Shaikh. ... Applicant.
Versus
State of Maharashtra & ors. ... Respondents.

Mr. A.H.H. Ponda, advocate for Applicant.

Mr. Santosh B. Sitap a/w. Mr. S.G. Kudle, advocate for respondent
Nos. 2 and 3.

Ms. R.M. Gadhvi, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 3, 2015

P.C.:

1 Heard the learned Counsel for the applicant, the learned
Counsel for the respondent Nos. 2 and 3 and learned APP for State.

2 This is an application under Section 439(2) of the Code of
Criminal Procedure, 1973. The applicant herein is seeking
cancellation of bail granted in favour of the respondents vide order

dated 1st October, 2013 passed by Metropolitan Magistrate, 13th Court, Dadar, Mumbai.

3 It is the case of the prosecution that the respondents herein had filed an application to Bombay Municipal Corporation on 25th March, 2013 and had forged the signatures of nine residents on the said application seeking cancellation of Schedule II of the scheme of rehabilitation and to enquire into the illegal tenancy. On the basis of the report of the present applicant, Crime No. 254 of 2013 was registered at R.A.Kidwai Marg Police Station against the respondents for offence punishable under Section 420, 465, 467, 468, 471 read with section section 34 of the Indian Penal Code.

4 The learned Counsel for the applicant has rightly drawn attention of this Court to the fact that although there were allegations against the respondents for serious offence such as Section 465, 467 of the Indian Penal Code, the respondents who were taken into custody on 27/9/2013 were enlarged on bail by the Metropolitan

Magistrate on 1st October, 2013 and therefore, it appears that the investigation was not conducted properly.

5 In the order dated 1st October, 2013, the learned Magistrate has observed that upon perusal of the case diary, investigation is in progress. That the forged document was seized by the police. The learned Magistrate has also considered that there was no scope for tampering of investigation and has enlarged the applicants/respondents on bail. However, there is an observation by the learned Magistrate that the respondents have not committed any offence of forgery. Prima facie, it is also observed that there was no evidence to show that the respondents-accused had committed offence punishable under Section 467 of the Indian Penal Code. Such observations were not only premature, but were unwarranted. However, taking into consideration that the respondents have been enlarged on bail almost 1 and ½ year ago and that there is nothing on record to indicate that they have committed breach of any conditions imposed upon them. In view of this, the order passed by

the Metropolitan Magistrate, 13th Court, Dadar, Mumbai dated 1st October, 2013 does not call for any interference as the parameters for grant of bail and refusal for bail would not be on the same ground. In view of that, the application seeking cancellation of bail deserves to be rejected.

6 However, it is made clear that in the eventuality that the accused/respondents file an application seeking discharge, the observations made by the Metropolitan Magistrate shall not be considered. At the time of trial also, the trial Court shall not be influenced by the observations made by the learned Metropolitan Magistrate or the dismissal of the present application.

7 In view of the above observations, the application is rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)