

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRI. REVISION APPLICATION NO. 109 OF 2015

Allahnoor Abdul Shaikh, Aged 28 Years,
Occupation Service, Resident of at Sanja
Road, Osmanabad, Taluka and District
Osmanabad

APPLICANT

V E R S U S

The State of Maharashtra and 10 others

RESPONDENTS

Mr. R.P. Bhumkar, Advocate for the Applicant
Mr. K.S. Patil, A.P.P. for the Respondent – State
Mr. Tushar Tandale, Advocate, holding for
Mr. B.K. Pawar, Advocate for Respondent Nos.2 to 11

CORAM : A.V. NIRGUDE

DATE : 2nd March, 2016

PER COURT :

1. This revision challenges order dated 18th May, 2015, passed by the learned Sessions Judge, Osmanabad, granting anticipatory bail to respondent nos. 2 to 11 while deciding Criminal Bail Application No. 171 of 2015. The petitioner is complainant in the said case. It is his case that respondent nos. 2 to 11 misled learned Sessions Judge into passing the impugned order. They did not disclose that their earlier application filed before the same Court was withdrawn. I have verified this claim and found

IT to be truthful. Indeed, respondent nos. 2 to 11 moved their earlier application for similar relief, but same was withdrawn. The applicant also mentioned that the earlier bail application was pressed, and after the learned Judge showed his inclination not to allow the same, the submission was withdrawn. Without disclosing this fact, second application was moved, and as said above, the same was allowed. According to the applicant, because of this dishonest conduct of respondent nos. 2 to 11, the protection given to them should be withdrawn.

2. On the other hand, respondent nos. 2 to 11 submitted an affidavit in which they stated that the incident alleged in the complaint (Crime No. 112 of 2015) arose mainly because of revision applicants matrimonial dispute with his wife who happens to be daughter of respondent nos. 2 and 3. In the affidavit in reply it is mentioned that in November, 2015 a compromise was arrived at between husband and wife and the wife of the applicant has gone back to stay with him. No re-joinder is filed to refute this statement made in the reply, and therefore I am of the view that the matrimonial dispute has come to an end. Yet the applicant wants to continue his grievance and get bail cancelled.

3. Learned Counsel for the applicant was given sufficient time to find out from his client as to whether his client would continue this application. Today, the learned counsel after receiving instructions stated that his client would still continue with this proceedings.

4. There are several reasons why this application should not be allowed. The first and foremost reason is, the applicant's action of

pressing this application is spiteful and *malafide*. He wants to punish his in-laws despite the fact that his wife had come back for cohabitation. The applicant is not recently married to his wife. Their marriage took place long back in 2007. In such situation, instead of taking conciliatory approach, the applicant clearly showed his cantankerous nature.

5. The learned Judge who granted the anticipatory bail to respondent nos. 2 to 11 and considered the case on merits, probably thought that the complaint was made due to matrimonial dispute. He probably thought that the complaint was false and accused deserved protection.

6. The next reason for not interfering in the impugned order is that filing a revision against such order is not permissible. Such an order is required to be challenged under Section 439, Sub-Section 2 of the Code of Criminal Procedure seeking its cancellation. Such an application could have been made easily before the same Judge, who had granted the impugned order. At the most application for cancellation of bail under Section 439, Sub-Section 2 of the Code of Criminal Procedure should have been made to this Court. By no stretch of imagination, such an order can be challenged by filing revision. There are sufficient provision in Chapter XXXIII of the Code of Criminal Procedure for grant and cancellation of bail. The application therefore stands rejected.

(A.V. NIRGUDE, J.)

