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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4103 OF 2016

Vasantrao Keshavrao Palve,
Age: 62 years, Occ: Advocate
and Agril., (Retired President
District Consumer Forum)
R/o. Iwale Lane, Maliwada,
Ahmednagar.

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Superintendent of
Police, Ahmednagar.
2. Ganesh Raju Trimbake,
Age: 22 years,
R/o. Nepti, Ahmednagar,
Tq. & Dist. Ahmednagar.
3. Police Inspector,
Kotwali Police Station,
Ahmednagar.

..RESPONDENTS

WITH

CRIMINAL APPLICATION NO.4102 OF 2016

Vasantrao Keshavrao Palve,
Age: 62 years, Occ: Advocate
and Agril., (Retired President
District Consumer Forum)
R/o. Iwale Lane, Maliwada,
Ahmednagar.

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Superintendent of
Police, Ahmednagar.

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2. Pramod @ Sonya Shivaji Trimbake,
Age: 24 years,
R/o. Bhawani Nagar,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.

3. Police Inspector,
Kotwali Police Station,
Ahmednagar.

..RESPONDENTS

Mr P.K. Palve with Mr D.K. Dagadkhair, Advocates
for applicant

Mr C.V. Dharurkar, Addl. Public Prosecutor for the
respondent/State;

Mr Niteen V. Gaware, Advocate for respondent No.2
in Criminal Application No. 4103 of 2016;

Mr R.P. Phatke, Advocate for respondent No. 2 in
Criminal Application No. 4102 of 2016

CORAM : A.S. CHANDURKAR, J.

DATE : 2nd DECEMBER, 2016

ORAL ORDER :

Since the prayer for cancellation of bail
granted to the respondent No. 2 in both the
applications has been made and the proceedings
arise out of the Crime No. 194 of 2016, these
applications are being decided by this common
order.

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2. The respondent No. 2 in Criminal Application No. 4102 of 2016 - Pramod and the respondent No. 2 in Criminal Application No. 2 - Ganesh were arrested pursuant to the registration of Crime No. 194 of 2016 at Kotwali police station, Ahmednagar under Sections 395, 363, 307, 327, 328, 341, 342, 504, 506 along with Sections 3 and 4 of the Arms Act.

3. The respondent No. 2 - Ganesh was arrested on 14th June, 2016, while the respondent No. 2 - Pramod was arrested on 13th June, 2016. Both the respondents were directed to be released by the order dated 20th July, 2016 by the learned Sessions Judge, Ahmednagar.

4. It is submitted by the learned Counsel for the applicant - informant that the learned Sessions Judge was not justified in relying upon the observations made by this Court in Criminal Application No. 3509 of 2016 for the purpose of granting bail. He submitted that without

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discussing the material against the respondent No. 2 and without perusing the police papers, the bail came to be granted. As there was non consideration of the relevant material, the order granting bail was perverse and was thus liable to be set aside. The learned Counsel then referred to the first information report to demonstrate the allegations against the respondent No. 2 herein. He also referred to the supplementary statements of the complainant and other witnesses to indicate that the accused were not entitled for being enlarged on bail. It was then pointed out that the bail application of the main accused – Rajendra Dev was dismissed by this Court on 18th August, 2016 and the Hon'ble Supreme Court of India had refused to interfere with the said order. The learned Counsel in support of his submissions placed reliance upon the judgment of the Hon'ble Supreme Court in Criminal Appeal No. 932 of 2016 (Chandrakeshwar Prasad @ Chandu Babu vs. State of Bihar and another) decided on 30th September, 2016, the order of the learned Single Judge of this Court

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dated 6th August, 2012 in Criminal Application No. 2522 of 2012 and subsequent order passed by the Hon'ble Supreme Court in the case of Gulabrao Baburao Deokar vs State of Maharashtra, 2014 Cri.L.J. 845. It was thus submitted that considering the seriousness of the offence, the bail as granted deserves to be cancelled.

5. The learned Additional Public Prosecutor submitted the police papers for perusal. It is submitted that from the respondent No. 2 – Pramod, a motor cycle had been seized, while from the respondent No. 2 – Ganesh, amount of Rs.3000/- had been seized.

The learned Counsel for the respondent No.2 opposed both the applications. It was pointed out that after being released on bail, the entire investigation was complete and in fact, on 29th November, 2016 the charge sheet had been filed. It is submitted that this Court while issuing notice in the present applications had directed the

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respondent No.2 to remain outside the jurisdiction of Ahmednagar town till the applications were decided. The respondent No. 2 had not misused their liberty and there was no reason to cancel the order granting bail. Hence, it was submitted that the applications deserve to be dismissed. The learned Counsel in support of his submissions placed reliance upon the judgment of the Hon'ble Supreme Court in Dolat Ram vs State of Haryana, 1995(1) SCC 349 as well as the order passed in Criminal Application No. 3578 of 2016.

6. I have considered the respective submissions and I have gone through the police papers. After the applicants were arrested, a motor cycle was seized from Pramod, while Rs.3000/- were seized from Ganesh. The learned Sessions Judge while passing the order granting bail has referred to these recoveries and has then observed that no specific role was attributed to either of the applicants. It is thereafter that the learned Judge of the Sessions Court has taken into

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consideration the *prima facie* observations made by this Court in Criminal Application No. 3509 of 2016 and has proceeded to grant bail. Considering the fact that the accused No.1 – Rajendra Dev, who was the main accused and had intended to displace the complainant is still behind the bars and considering the absence of any particular role being assigned to the respondent No. 2 herein, I do not find that the order passed by the learned Sessions Judge could be termed to be perverse. Though the order is short, the learned Judge has taken into consideration the recoveries effected and absence of any particular role assigned to the said accused. It is not the case that the liberty granted and conditions imposed have been misused. Considering the observations of the Hon'ble Supreme Court in Dolat Ram (supra), I do not find that there are any extraordinary circumstances or that the order granting bail is perverse in nature so as to cancel the same. In Gulabrao Deokar (supra) the Hon'ble Supreme Court noticed that the Sessions Court had granted bail in breach of mandatory

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requirements of the proviso to Section 439(1) of the Code of Criminal Procedure. The bail was granted on the same day without granting sufficient time to the Investigating Officer to justify the arrest. In the present case, the respondent No. 2 were granted police custody and were thereafter granted magisterial custody. In *Chandrakeshwsar Prasad* (supra) the Hon'ble Supreme Court after considering the antecedents of the accused therein found that the High Court was not justified in granting bail to him. The facts of the present case, however, do not indicate that on the basis of the material before this Court a case has been made out to cancel the bail already granted. The apprehension regarding the threat to the witnesses can be taken care by continuing the directions issued by this Court on 25th July, 2016 till conclusion of the trial.

7. In view of aforesaid discussion, the following order is passed : -

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: O R D E R :

Both the criminal applications stand rejected. However, the condition imposed by this Court in the present matters by order dated 25th July, 2016 directing the respondent No. 2 to remain outside the jurisdiction of Ahmednagar town shall continue to operate till completion of the trial.

(A.S. CHANDURKAR, J.)

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