

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

CRIMINAL APPLICATION NO.5805 OF 2015

Milind s/o Anand Mobharkar,
Age: 54 years, Occ: Social Work,
R/o. Anand Vihar Apartment,
Gaikwad Mala, Savedi Road,
Ahmednagar.

...Applicants

versus

1. The State of Maharashtra
Through Investigation Officer,
Kotwali Police Station, Ahmednagar.

2. Shrikant s/o Shankar Chindam,
Age: 35 years, Occ: Business,
R/o. Delhi Gate, Ahmednagar,
Tq. & Dist. Ahmednagar.

...Respondents

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Mr. N.B. Narwade, Advocate for applicant

Mr. S.P. Deshmukh, Addl. Public Prosecutor for respondent
No.1

Mr. Niteen V. Gaware, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 23rd FEBRUARY, 2016

ORAL ORDER :

Present applicant is the complainant in Crime No. I-162
of 2015 for the offence punishable under Sections 326, 325, 143,
147, 148, 149, 506 of Indian Penal Code and under Section 37(1)(3),
135 of Bombay Police Act.

2. This is an application under Section 439(2) of the Criminal Procedure Code, by the applicant-complainant, seeking cancellation of bail granted to respondent No. 2 by the Additional Sessions Judge, Ahmednagar, vide order dated 30/09/2015, passed in Criminal Misc. Application No. 1073/2015.

3. The applicant claims to be a social worker. He went for swimming on 23/06/2015 and while leaving, he was assaulted by the persons including that of respondent No. 2 herein, threatening the applicant that he ought not to have dared to depose against their mentor in a criminal case of murder. It is brought to my notice that sitting Member of Legislative Assembly from the said area is an accused in one Lande murder case, in which the present applicant is cited as a witness.

4. After registration of the above referred offence, present respondent No. 2 approached learned Additional Sessions Judge, Ahmednagar vide Criminal Misc. Application No. 1073 of 2015 for grant of pre-arrest bail. Learned Sessions Court granted ad-interim protection to respondent No. 2 vide order dated 10/08/2015, with following observations:-

“In the event of arrest of applicant Shrikant Shankar Chindam by Kotwali Police Station, Ahmednagar in Crime No. I-162/2015, under Sec. 326, 325, 143, 147, 148, 149, 506 of I.P.C. he be released on P.B. and S.B. of Rs.15,000/- with one solvent surety in like amount.

Applicant shall attend Kotwali Police Station, Ahmednagar on every Wednesday and Sunday between 10 a.m. to 1 p.m. and co-operate with investigation. Applicant shall not tamper with prosecution evidence.

Issue notice to the State and call for report from Kotwali Police Station, Ahmednagar, returnable on 25.08.2015.”

5. After the report of Investigating Officer was received in the matter, learned Sessions Court was pleased to confirm ad-interim protection granted to respondent No. 2, in exercise of powers under Section 438 of Code of Criminal Procedure by order dated 30/09/2015, on the same terms as are mentioned in the order granting ad-interim protection in favour of respondent No. 2 with further observations that respondent No. 2 shall co-operate with the investigating agency and shall not tamper with the prosecution evidence.

5. It is this order, of grant of pre-arrest bail in favour of respondent No.2, of which cancellation is sought by way of the present application.

6. Heard respective Counsel. Mr. Narwade, learned Counsel for the complainant would urge that learned Sessions Court ought not to have granted pre-arrest bail in favour of respondent No. 2, particularly in view of the fact that he himself is an eye witness to the crime in question. He would then urge that respondent No. 2 has come out with misleading statement in bail application claiming to be a Corporator of Ahmednagar Municipal Corporation and as such, holding image/goodwill in the society and has respect for law. He would then submit that the said statement claiming that respondent No. 2 is a Corporator, is formed to be basis, so as to form an opinion that respondent No. 2 is a person of repute in the society for grant of pre-arrest bail. He would submit that the said statement is palpably false as respondent No. 2 is not a Corporator of the Municipal Corporation.

7. The next submission of learned Counsel for the complainant is that at the behest of present complainant, non cognizable offence is registered, wherein threats were issued to him at the behest of respondent No. 2 or his mentor and other co-accused.

8. Third submission of learned Counsel for the complainant

is that the order of granting ad-interim pre-arrest bail, though is confirmed on 30/09/2015, present respondent No. 2 has not reported the concerned police station as directed and has not co-operated with the investigating agency. After grant of interim pre-arrest bail in his favour, respondent No. 2 neither appeared before the investigating agency nor executed bail bonds. Respondent No. 2 has also not co-operated with the investigation. According to him, as a consequence of above, in stead of seeking cancellation, the investigating agency has supported the accused and without taking recourse to the provisions under Code of Criminal Procedure, particularly Section 82 of Code of Criminal Procedure declaring him as absconder, charge sheet came to be filed against him under Section 299 of Code of Criminal Procedure. According to him, as respondent No. 2 has neither honoured conditions nor submitted to the jurisdiction of the Court which speaks his criminal mind and disrespect for the Court procedure.

7. While opposing the application, Mr. Gaware, learned Counsel for respondent No. 2 would submit that the application is not tenable in absence of specific ground qua jumping of conditions on which he was released on pre-arrest bail. According to him, respondent No. 2 is not named in the first information report and that was major consideration before the learned Sessions Court for grant

of pre-arrest bail. He would then urge that the investigation in the matter is already completed and charge sheet is filed, as such, no fruitful purpose will be served by ordering detention of respondent No. 2 and as per law laid down by the Apex Court in the matter of **Siddharam Satlingappa Mhetre vs. State of Maharashtra & ors.**, reported in **AIR 2011 SC 312**, pre-arrest bail granted continues upto conclusion of trial. According to him, respondent No. 2 has appeared before the investigating agency, so also Superintendent of Police and has relied upon the attendance certificates which are produced on record alongwith affidavit dated 12/02/2016, wherein it has been certified that respondent No. 2 has attended police station on 23/08/2015, 26/08/2015, 04/09/2015 and 06/09/2015. He would then submit that respondent No. 2 had appeared before the Superintendent of Police, Ahmednagar and Police Inspector of Kotwali Police Station, Ahmednagar by giving communications on 08/02/2016, 10/02/2016, 20/02/2016 and 22/02/2016 informing that he is available for investigation purpose. Respondent No. 2 has also made a grievance, in the above referred one of the communications that the Investigating Officer is not marking his presence/attendance. According to him, in view of law laid down by the Apex Court in the matter of **Dola Ram vs State of Haryana** reported in **1995(1) SCC 349**, particularly paragraph Nos. 4 and 5, the parameters for cancellation of bail and rejection of bail are altogether different. He

would then urge that bail granted cannot be cancelled, as same hampers his fundamental right.

8. Having bestowed my thoughtful consideration to the submissions made, it is required to be noted that present respondent No. 2-accused has come out with a specific case that he is a Corporator of Municipal Corporation. The consideration that he is a Corporator of Municipal Corporation and enjoying repute in the society is very much reflected in the final order dated 30/09/2015. Respondent No. 2 submits that he is not Corporator, but is ex-Corporator, however it is required to be observed that respondent No.2 has come out with a case that he is holding public office and as such, holds reputation in the society, was found to be one of the basis for granting pre-arrest bail in his favour. In my opinion, such act on the part of respondent No. 2 of making palpable incorrect/false statement and taking benefit of such statement for securing pre-arrest bail is required to be considered by this Court.

9. It is also required to be noted that while releasing present respondent No. 2 on pre-arrest bail, respondent No. 2 was directed by the Court to co-operate with the investigating agency and not to tamper with the prosecution evidence. It is noted that the condition for grant of pre-arrest bail was that he shall attend the

police station on every Wednesday and Sunday between 10-00 a.m. to 1-00 p.m. and co-operate with the investigating agency. It is required to be noted from the record that till the order of granting him final relief of pre-arrest bail, respondent No. 2 has attended the police station on four dates, however there is hardly any material on record to demonstrate that respondent No. 2 has respected Court's order confirming his pre-arrest bail by attending police station as ordered by learned Additional Sessions Judge, Ahmednagar. As a consequence of non attendance/non compliance with the conditions, charge sheet came to be filed against respondent No. 2 under Section 299 of Code of Criminal Procedure. Apart from above, it is required to be noted that non attendance by present respondent No. 2 has also resulted into non co-operating with the investigating agency, in the matter of investigation of crime in question. Though respondent No. 2 has come out with a case that he has tried to attend investigating agency on 08/02/2016, however conduct of respondent No. 2 is required to be scrutinized, particularly having regard to the history of present case. Respondent No. 2 regularly for four times appeared before the Investigating Officer prior to 30/09/2015 i.e. prior to the order of confirmation of his pre-arrest bail. Subsequent thereto, once pre-arrest bail was confirmed in favour of respondent No. 2, he remained absent before the Investigating Officer, though he was directed by the Sessions Court. Thereafter,

this Court, taking cognizance of the present application at the behest of complainant ordered issuance of notice to respondent No. 2 on 17/11/2015. It is thereafter also present respondent No. 2 has not bothered to attend the Court, in which the charge sheet is submitted against him. It is only after this Court has prevailed upon the respective Counsel to work out the matter, respondent No. 2 has started attending the office of Superintendent of Police, Ahmednagar, that too, very recently about two weeks back that too after filing of chargesheet.

10. In my opinion, the above referred conduct of respondent No. 2 does not reflect any respect for law, much less respect for the Court orders.

11. It is also required to be noted that assault on the complainant perhaps appears to be outcome of he being a witness in one of the criminal trials. In criminal justice system, protection of the witness is an issue, which is required to be addressed by the Court with all seriousness, so as to ensure that culprits are brought home.

12. In this background, in my opinion, it will be appropriate to order cancellation of the bail granted to respondent No. 2. As a consequence of above, I pass the following order:-

The pre-arrest bail granted in favour of respondent No. 2 by learned Additional District Judge-4 and Additional Sessions Judge, Ahmednagar on 30/09/2015 in Criminal Misc. Application No. 1073 of 2015 is hereby cancelled, in exercise of powers under Section 439(2) of Code of Criminal Procedure. His bail bonds stand cancelled. He shall surrender forthwith.

13. The application is allowed in above terms.

14. At this stage, Mr. Gaware, learned Counsel for respondent No. 2 submits that the order of cancellation of bail be kept in abeyance for period of four weeks from today, which request is objected by learned Counsel for the complainant.

15. In the fitness of things, in my opinion, it will be appropriate to grant four weeks protection to the respondent No. 2 as was ordered by the learned Session Court, since he was enlarged on bail by learned Sessions Court, Ahmednagar on 30/09/2015.

[N.W. SAMBRE, J.]