

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

CRIMINAL APPLICATION NO. 5616 OF 2014

Mahananda w/o Chandrakant Bapure,
Age 46 years, Occu. Household,
R/o Gulbarga, District Gulbarga (K.S.)

..The Applicant

Versus

1. The State of Maharashtra,
through the Police Station Officer,
Police Station, Udgir, Taluka Udgir,
District Latur

2. Rajshekhar s/o Kashinath Bapure,
Aged 41 years, Occu. Business,
R/o Bapure Complex, Udgir,
Taluka Udgir, District Latur

..The Respondents

- WITH -

CRIMINAL APPLICATION NO.5617 OF 2014

Chandrakant s/o Kashinath Bapure,
Age 53 years, Occu. Business,
R/o Gulbarga, District Gulbarga

.. The Applicant

Versus

1. The State of Maharashtra,
through the Police Station Officer,
Police Station, Udgir, Taluka Udgir,
District Latur

2. Rajshekhar s/o Kashinath Bapure,
Aged 41 years, Occu. Business,
R/o Bapure Complex, Udgir,
Taluka Udgir, District Latur

.. The Respondents

Mr P.A. Bharat, Advocate for applicants
Mr S.D. Ghayal, A.P.P. for respondent no.1-State,
Mr M.S. Karad, Advocate h/f Mr S.S. Thombre, Advocate for respondent
no.2

CORAM : A.M. DHAVAL, J.

DATE : 29th November 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, matters are heard finally at admission stage.
2. Both the applicants who are husband and wife of each other were released, one on anticipatory bail (Mahananda) and other on regular bail in Crime No.71/2013 registered at Udgir Police Station under Sections 420, 467, 468, 471 read with Sec.34 of Indian Penal Code. While releasing them on bail one of the conditions was imposed that Mahananda shall report to the Investigating Officer till the filing of charge-sheet. Whereas, the husband Chandrakant was directed to report between 9.00 a.m. to 12.00 noon on every Sunday till filing of the charge-sheet. This order was passed by the learned Additional Sessions Judge, Udgir on 30.10.2013 in Bail Application Nos.205/2013 and 208/2013. The informant Rajshekhar filed M.A. No.5/2014 for cancellation of bail on the ground that the condition of attendance at Police Station was not fulfilled by accused no.2 Mahananda. Similarly, M.A. No.6/2014 was filed for cancellation of bail of accused no.1 Chandrakant. In both the matters, identical says were filed disclosing that the applicants had appeared on some dates at the police station for which they have acknowledgement while on some days though they attended the police station, no acknowledgement was given and the Investigating Officer was demanding bribe for early submission of charge-sheet. The learned Sessions Judge found that the applicants had appeared before the police station only on two dates and there was substantial breach of the order regarding attendance. On this ground, by order dated 1.10.2014, the bail was cancelled.

3. On filing these applications, protection was granted to both the applicants.

4. Heard learned Advocate Mr Bharat for the applicants, learned A.P.P. MR Ghayal for State and learned Advocate Mr Karad holding for Mr S.S. Thombre, Advocate for respondent no.2.

5. The F.I.R. in Crime No. 71 of 2013 shows that the informant Rajshekhar and the two accused Chandrakant and Mahananda were Directors of one company, by name 'Sangeetchandra'. They had purchased some lands where 31 shops were constructed. Accused no.1 Chandrakant got the said property transferred in the Municipal record in his own name, but the informant took steps for restoration of name of the Company in the Municipal record. Thereafter, two shop premises from the property were sold by the accused to the exclusion of the informant and the sale-deeds were bogus, as those were executed by misrepresentation though accused no.1 Chandrakant was the sole Director.

6. While granting bail, the learned trial Judge observed that there was document to show that the informant had resigned from the Company in 1995. He also expressed that there was no possibility of tampering the witnesses or fleeing away by the accused from justice. Hence, he had granted the bail.

7. The law regarding cancellation of bail under Section 437 (5) and 437 (2) of the Cr.P.C. is well crystalised in following judgments :

- 1) **CBI Vs.Subramani Swami & Anr. 2011 Cr.L.J.3355**
- 2) **Padmakar Bhavnagar Vs. State of Maharashtra 2012 (13) SCC 720**
- 3) **Devender Kumar & anr Vs.State of Haryana 2010 Cr.L.J.3849**
- 4) **Raghubir Singh & Ors. Vs. State of Bihar AIR 1987 SC 149**
- 5) **Biman Chatterjee Vs. Sanchita Chatterjee & ors., AIR 2004 1699**

8. Broadly speaking, the bail can be cancelled only when there is interference or attempt to interfere with due course of justice or abuse of concession of bail. When the liberty given to the accused by way of bail is misused and any attempts are made to tamper the witnesses or to flee away from justice or when the accused commits similar types of offences. Sometimes, though conditions regarding undertaking to deposit part of huge amount of scam money may be mandatory, the breach whereof may result into cancellation of the bail. But, barring such exception, in normal course if such conditions regarding attendance at the police station is not followed, the bail cannot be cancelled in all cases. The conditions for attendance at the police station should be imposed reasonably with specified object of assisting the Investigating Officer in carrying out the investigation. A blank direction to attend the police station till the filing of charge-sheet many a times serves no purpose as the police do not file charge-sheet in reasonable time. Therefore, while imposing such conditions a specified period in the alternate should be also fixed. In

the present case, charge-sheet was not filed for three years from 2013 to 2016. In such case, attendance of the accused persons at the police station from 9.00 a.m. to 12.00 noon on every Sunday was unnecessary punishment to them with no corresponding benefit to the investigating agency.

9. I find that the applicants were charged for offence of small magnitude triable by learned Judicial Magistrate, First Class. There were no allegations of possibility of tampering or fleeing away from justice. There was no complaint of the Investigating Officer that the non-attendance of the accused persons at the police station has hampered his investigation. In such cases merely for mental pleasure of the informant, the bail cannot be cancelled. It is desirable that while granting bail, the condition to attend the police station on particular date should be also incorporated in the bail bonds and for breach of such conditions, there can be at the most some penalty by way of forfeiture of part of the bond amount, but merely because the accused did not attend the police station, if it does not affect the investigation, it cannot be a ground to cancel the bail.

10. Since the grant of protection by this Court in 2014, there is no report that the accused have misused the liberty in any way. Trial of the case before Judicial Magistrate, First Class will take its own time and I see no justification in detaining the applicants in jail till the end of the trial. Therefore, both the applications deserve to be allowed. Hence, the order.

ORDER

(i) Criminal Application No.5616 of 2014 and 5617 of 2014 are hereby allowed.

(ii) The impugned order dated 1.10.2014 passed by learned Additional Sessions Judge, Udgir in M.A. No.5/2016 and 6/2016 of cancellation of bail are quashed and set aside with direction to the applicants to remain present regularly in the trial Court, either personally or through Advocate, as may be necessary.

(A.M. DHAVAL, J.)

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