

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 47 OF 2017

MR. MOHAMMAD MUSTAKIM SHAIKH., ... Applicant
Versus
SHIR. MOHAMMAD UMAT ALI AND 3 ... Respondents
ORS.,

Mr. Vedraj Toraskar, Advocate for the applicant.

Mr. S. Shet, Advocate for respondent nos.1 and 2.

Mr. Mahesh Amonkar, Additional Public Prosecutor for respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 27th February, 2017

P.C.

The applicant, who is the brother of the original complainant, is seeking cancellation of bail granted to respondent nos.1 and 2.

2. Respondent nos.1 and 2 are husband and wife and they are respectively accused nos.1 and 3 in Sessions Case No.8/2016 on the file of the learned Sessions Judge at Panaji. Respondent nos.1 and 2 along with four others, are facing prosecution for the offences punishable under Sections 504, 323, 307, 302, 427, 506(ii), 120-B read with Section 34 of Indian Penal Code (IPC, for short).

3. According to respondent nos.1 and 2, there was free fight

between two groups, in which respondent nos.1 and 2 had not participated. It was claimed that respondent no.1, who is aged 54 years, had suffered paralytic attack and is unable to fully utilise his arm. The second respondent is a house wife and being a lady, is entitled for bail. The learned Sessions Judge, after considering the medical ground of respondent no.1 and the fact that respondent no.2 is a lady and further having regard to the fact that there are 75 prosecution witnesses listed and the trial would take some time, has granted bail to respondent nos.1 and 2, by an order dated 25/11/2016. The applicant is seeking cancellation of the same on the sole ground that there is a possibility of tampering of the prosecution witnesses.

4. I have heard the learned Counsel for the applicant, the learned for respondent nos.1 and 2 and Shri Amonkar, the learned Additional Public Prosecutor for respondent no.3. I have also perused the copy of the chargesheet, which is produced.

5. The application is filed under Section 439(2) of Criminal Procedure Code (Cr.P.C., for short). The Hon'ble Apex Court in the case of STATE THROUGH CBI VS. AMARMANI TRIPATHI; [AIR 2006 SCW 4339], has held that in an application for cancellation of bail, conduct subsequent to release on bail and the supervening circumstances alone are relevant. In the present case, the applicant has not shown that there were any

attempts of tampering of the prosecution evidence or witnesses. The apprehension, in this regard, has to be based on some objective circumstances, on which the Court can act and not otherwise. As noticed earlier, the investigation is complete and the chargesheet is also filed. Respondent no.2 being a lady, would be otherwise entitled to the benefit of the proviso to Section 437 of Cr.P.C.

6. I have gone through the order passed by the learned Sessions Judge and I do not find any reason to take a different view. In any event, no case for cancellation of the bail has been made out. In the result, the Criminal Application (Main) is dismissed.

C. V. BHADANG, J.

SMA