

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL MISC. APPLICATION (MAIN) NO. 280 OF 2017**

State  
through its Superintendent of Police(major)  
CID, Crime Branch,  
Ribandar, Goa.

..... Applicant

V e r s u s

Mr Imran Khan,  
Aged 36 years,  
Resident of 2730, Murida,  
Fatorda, Margao, Goa.

..... Respondent

Shri S. R. Rivankar, Public Prosecutor for the Applicant.

Shri Nitin N. Sardessai, Senior Advocate with Shri Kaif Noorani, Advocate  
for the Respondent.

**Coram :- NUTAN D. SARDESSAI, J**

**Reserved for Order on : 27 November 2017**  
**Pronouncement of Order on :21 December 2017**

**ORDER**

The State is seeking the cancellation of bail granted to the Respondent by recourse to Section 439(2) and Section 482 of Cr.P.C. challenging the Order dated 15.09.2017 passed by the Special Judge, North Goa, Panaji, granting bail to him.

2. Heard Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State whose contention was that there were ample powers

in this Court under Section 439(2) of Cr.P.C. to cancel bail granted in favour of the Respondent by the learned Sessions Court as the order was both illegal and perverse. He adverted to the complaint lodged by the Director of Mines and Geology on 12.08.2013 and an FIR registered thereon by the Crime Branch under the various provisions of IPC, The Prevention of Corruption Act, Mines and Minerals (Development & Regulations) Act 1957 (MMDR) and the Mineral Concession Rules amongst others and pursuant to which a SIT was constituted by the State to conduct the investigation in the crime which involved illegality in the mining operations and trading of iron ore between 2007 to 2012. The Respondent was involved in the extraction and transportation of ore who was called for investigation in connection with the said crime on 12.09.2017 and before any interrogation could be done, an application was moved for bail before the learned Special Court which listed the matter on the same night at 21.00 hours for hearing on the bail.

3. The matter further came to be listed on the following morning at 10.00 hours and it was posted for orders on 15.09.2017 when bail was granted. The Applicants barely had three days time to carry out the interrogation and there was virtually no scope for custodial interrogation as the Investigation Officer was busy before the Special Court in preparing the reply and the paper work in connection with the filing of the reply and hearing of the bail application. The relevant

material had been placed before the learned Special Judge who had not considered the same while granting bail to the Respondent. He adverted to the relevant material being the statement of the owner of the Mining concession, the arrest panchanama, the freezing of the Bank Accounts and fixed deposits and other related material to buttress the case that there was no proper evaluation of the material by the learned Special Judge which clearly indicated that the mining operations carried out during this period were illegal and that the Respondent had a major role to play therein.

4. Shri Rivankar, learned Public Prosecutor further adverted to the profit and loss account of the Respondent firm, Imran Traders which reflected the royalty charges paid by him clearly indicating that the mine was operated by him. He further adverted to the sales Registrar and the letter dated 03.03.2011 and submitted that the documents on record were more than sufficient to deny bail to the Respondent. The lease under the MMDR Act was not renewed after the year 2007 and therefore royalty ought not to be accepted as the Mining Lease was not renewed. He referred to Rule 37 of the Mineral Concession Rules, 1960 which read an embargo on the transfer of the mining leases and submitted that the mining operations done contrary thereto and Rule 24A clearly indicated that illegal mining was done by the Respondent. He next adverted to the various paragraphs of the impugned order to point out how the learned

Special Judge had vacillated in his stand while appreciating the case of the State and therefore in the absence of examination of the relevant material by the learned Special Judge, it had resulted in an illegal exercise of jurisdiction and a perverse order and therefore it was a fit case to cancel the bail granted in favour of the Respondent.

5. Though Article 21 of the Constitution of India recognises the right of an accused to liberty, custodial interrogation was an inherent facet of the procedure established by law to curtail such liberty and therefore there was no basis to urge that the right to liberty was violated. Section 41 Cr.P.C. envisaged the procedure established by law and therefore such a contention was without basis. The learned Special Judge had granted bail to the Respondent without any opportunity to the State to carry out investigation. He placed reliance in *Siddharam Satlingappa Mhetre vs State of Maharashtra & Ors.* [(2011) 1 SCC 694], *State of UP vs Amarnath Tripathi* [(2005) 8 SCC 21], *Gurcharan Singh & Ors. vs. State (Delhi Administration)* [1978 0 AIR (SC) 179], *State vs Anil Sharma* [1997 7 Supreme 670], *The State of Maharashtra vs Esarar Ahmedkha* [2013 0 AIIMR(Cri) 3984], *Y. S. Jagan Mohan Reddy vs. Central Bureau of Investigation* [(2013) 7 SCC 439] and *Nimmagadda Prasad vs Central Bureau of Investigation* [(2013) 7 SCC 466], to support his case that the State had amply made out a case for the cancellation of bail.

6. Shri Nitin N. Sardessai, learned Senior Counsel on behalf of the Respondent canvassed at the outset that the parameters in the cancellation of bail were different from those for the grant of bail and therefore that aspect of the matter could not be overlooked while deciding the present application. There was no reference to any acts of forgery by the Respondent and therefore an offence under that head could not be registered against him. There was no averment in the application that specific documents were shown to the learned Judge and they were not considered. The case was filed vide the crime no.15/2013 on 12.08.2013 while the Respondent was placed under arrest four years later on 12.09.2017 and released on bail on 15.09.2017. The application for the cancellation of bail was moved only on 30.10.2017 i.e. 45 days thereafter which displayed no seriousness in the application from the conduct of the State. Besides the conditions of bail were modified on 06.10.2017 and even thereafter the Respondent was not called to report at the Police Station in connection with the investigation in the said crime. There was no explanation for 55 days delay to seek for the cancellation of bail. In any event, the minimum punishment to which the Respondent could be punished was for the offence alleged under IPC of seven years while the minimum punishment was for the offences alleged under the MMDR Act 1957.

7. Shri Nitin N. Sardessai, learned Senior Counsel next adverted to Section 8-A of the said Act and sub-section (6) thereof and contended that there was no scope to urge that mining was illegal after 2007 based on the Supreme Court Judgment delivered in 2014. The material on record did not reveal any offence of cheating and therefore there was no scope to allege the offence against the Respondent under Section 420 of IPC. The provisions of the Prevention of Corruption Act could also not be invoked against the Respondent not being a public servant. There was no seriousness in the case of the State and hence there was no case made out for cancellation of bail. He next adverted to Rule 25-A of the Mineral Concession Rules, 1960 and submitted that there were no basis to allege that there was a transfer of lease involved in terms of Rule 37 thereof. The learned Special Judge had considered each of the documents referred to by the learned Public Prosecutor and to which due reference was made in the impugned order and therefore no case whatsoever was made out for the cancellation of bail granted in favour of the Respondent. It was otherwise his submission that the same registers referred to by the learned Public Prosecutor were irrelevant documents to seek the cancellation and which at the highest showed that certain quantities of ores was sold by the Respondent. Rule 37 of the Mineral Concession Rules, 1960 was applicable to the lessees and the Respondent not being a lessee, it did not apply to him. Last but not the least, the Respondent had been operating the mining lease on the basis

of the Power of Attorney granted in his favour by the said Maria. He distinguished the Judgment in Amarnath Tripathi, Gurcharan Singh & Ors., Anil Sharma, Esarar Ahmedkha and that in Y. S. Jagan Mohan Reddy (supra) relied upon by the learned Public Prosecutor and on his part, placed reliance in Narendra K. Amin vs State of Gujarat & anr. [(2008) 13 SCC 584], Ramcharan vs State of M.P. [(2004) 13 SCC 617], Dolat Ram & Ors. vs. State of Haryana [(1995) 1 SCC 349], Directorate of Revenue Intelligence vs Harsh Vasant & anr. [2010 (114) DRJ 33] and Bhagirathsinh Judeja vs State of Gujarat [(1984) 1 SCC 284] while pressing for the dismissal of the application.

8. Shri S. R. Rivankar, learned Public Prosecutor in reply adverted to the complaint, once again reiterated that though the Respondent was arrested in the evening of 12.09.2017, he moved the learned Special Court initially for anticipatory bail and which application was later converted to one for regular bail. Remand was obtained which was granted for two days and when the State barely had any time for carrying out the investigation in the matter. The grant of bail on 15.09.2017 was not at all justified when the learned Judge had himself recorded in the remand application that there was no time at all for carrying out the investigation. He next submitted that the Power of Attorney granted in favour of the Respondent made no reference whatsoever to the operation of mines and therefore all the submissions

about the Respondent being in operation of the mine at the instance of the principal was without any basis. The carrying on of the mining operations therefore without license tantamounted to a theft of ore and attracted the offence under Section 379 of IPC. The Government Officials had acted in conspiracy with the Respondent and permitted the extraction of ore and therefore the ingredients of the offence under Section 409 and 120-B of IPC were made out. He also further submitted that the provisions of Section 8-A sub-section (6) of MMDR Act related to renewal applied to the owners and operated as a bar under the Act in the matter of transfer. The benefit thereof could have been availed of only by owner of the mine and not any third party. He adverted to the impugned order and showed the vacillating stand adopted by the learned Special Judge while holding at one time that the case was made out against the Respondent and yet on other occasions giving totally converse and perverse findings in favour of the Respondent. The learned Special Judge ought to have allowed the Investigating Officer to conduct custodial interrogation and therefore there was multiplicity in the events of perversity and illegality in the order passed by the learned Special Judge. The State had therefore made out a fit case for the cancellation of bail and the application had to be allowed.

9. i would consider the various Judgments relied upon by the learned Public Prosecutor and the learned Senior Counsel on behalf of

the Applicant and the Respondent respectively, fleetingly refer to the relevant provisions of the MMDR Act amongst others and more particularly the order under challenge to assess whether there was illegality and perversity in the findings rendered by the learned Special Judge and allow the application under consideration.

10. In Siddharam Satlingappa Mhetre (supra), the Hon'ble Apex Court held that the society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. It was held at Paras 84 and 85 as below :

“84. Just as the Liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.

85. It is a matter of common knowledge that a

large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because section 438 Cr.P.C. has not been allowed its full play. The Constitution Bench in Sibbia's case (supra) clearly mentioned that section 438 Cr.P.C. is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were sections 437 and 439 Cr.P.C. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that section 438 Cr.P.C. should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia's case."

11. In Amarmani Tripathi (supra), the Hon'ble Apex Court spelt out the well settled principles governing the consideration of an application for bail and referred to the principles relating to grant or refusal of bail as laid down in Kalyan Chandra Sarkar vs Rajesh Ranjan [2004 (7) SCC 528], where it was observed at para 11 as below :

"11. Being aggrieved by the two orders of the Allahabad High Court granting bail to Amarmani and Madhumani, the State has approached this Court. Shri Gopal Subramaniam, learned Additional Solicitor General appearing for the petitioner, submitted that the material on record, before the High Court clearly disclosed the following position:

i) That the murder of pregnant Madhumita, a heinous crime, was committed in pursuance of a conspiracy hatched by accused 1 to 5. The murder was committed by the killers (accused 1 & 2), hired by accused no.4 with the concurrence, support and protection of accused no.5, through accused no.3. There was material to show (i) the illicit relationship of Amarmani with the deceased resulting in three pregnancies; (ii) Amarmani's intention to get out of the relationship; (iii) Amarmani's attempt to put an end to the last pregnancy also, by requiring his servant Pappu Chaudhary to pose as the father of the foetus and give consent for abortion; (iv) Madhumani's ire and jealousy against the deceased and expression of an intention to get rid of her; (v) Madhumani's subsequent action in engaging killers (accused 1 and 2) through accused No.3 to

kill Madhumita; and (vi) the consent of Amarmani for Killing Madhumita, as instructed by his wife without involving his name and assuring protection to the persons committing the murder.

ii) That Amarmani was interfering with the investigation, by trying to side-track it and mislead the Police into a false trail, planting false stories in the media, creating false evidence and threatening witnesses either directly or by using the police. He even managed to get the Police Officers (including an officer of the Rank of SSP) who were not toeing his line, transferred.

iii) That after release on bail in pursuance to the order of the High Court, Amarmani was attempting to threaten/coerce/buy over witnesses (Nidhi Shukla, sister, Shanti Kumari Shukla and Najib Khan).

iv) That Madhumani had already absconded earlier. Only the rejection of bail application of her husband on that ground made her to surrender. There is every likelihood of her again fleeing, if she continuous to be on bail. Further, if Amarmani alone is denied bail, the threatening of witnesses will be taken over

by Madhumani.”

This Judgment is clearly distinguishable where bail was cancelled as Amarmani was found tampering with and intermediating the witnesses and hampering the trial.

12. It had also considered the Judgment in Pawan (supra), while observing that a detailed examination of the evidence is to be avoided while considering the question of bail to ensure that there is no prejudging and no prejudice while dealing with the matter of cancellation of bail to the Respondent Amarmani who was involved in offences punishable under Section 302 of the Indian Penal Code amongst others and as it was found that there was violation of the terms of bail by interfering with the course of investigation and threatening the witnesses.

13. Gurcharan Singh (supra), with another was an Appeal by Special Leave directed against the Judgment and Order of the Delhi High Court canceling the orders of bail of each of the Applicants passed by the learned Sessions Judge, Delhi, who were arrested in pursuance of the FIR lodged by the Superintendent of Police in the Sunder murder case. The Sessions Judge had secured them with the orders of bail while the High Court had set aside the orders observing that considering the

nature of the offence, the character of the evidence including the fact that some of the witnesses during preliminary inquiry did not fully support the prosecution case; the reasonable apprehension of the witnesses being tampered with and all the other factors relevant for consideration and held that the learned Sessions Judge did not exercise its judicial discretion on relevant, well recognised principles and factors. The Apex Court reiterated the two paramount considerations namely the likelihood of the accused fleeing from justice and his tampering with the prosecution evidence relate to ensuring a fair trial of the case in a court of justice and that it was essential that due and proper weight should be bestowed on these two factors apart from others and there could not be inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or canceling bail. It was further held that the High Court had correctly appreciated the entire position and the Sessions Judge did not at that stage when the case was before him and therefore, were not justified to interfere under Article 136 of the Constitution of India with the discretion exercised by the High Court in cancelling the bail of the Appellants.

14. In Anil Sharma (supra) though while dealing with an application for pre-arrest bail under Section 438 Cr.P.C., the Hon'ble Apex Court held that custodial interrogation was qualitatively more

elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this namely where the Respondent was alleged to have acquired wealth to the tune of ₹16,65,000/- as against his known sources of income while he was a Minister and a member of the Legislative Assembly and involved in an offence under the Prevention of Corruption Act, that effective interrogation of the suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he was interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

15. In *Esarar Ahmedkha* (supra) though while dealing with the matter of anticipatory bail in terms of Section 438 Cr.P.C., in respect of offences under Section 420, 467, 468, 471 and 120-B of IPC, the Apex

Court observed that whenever a person is protected by an order of anticipatory bail and he is interrogated but such interrogation is never effective, it is always necessary for any Court to keep in mind that the police has statutory power of investigation and the Court is expected to take care and see that there is no interference in the exercise of that power of the police. If, in such a case, relief of anticipatory bail is granted, the entire purpose behind the investigation gets frustrated. It was observed that the learned Judge of the Sessions Court had not considered this matter on this angle and observed that the investigation must have been hampered due to the relief granted in favour of the Respondents. Further, granting of relief in such a case sends a wrong signal to the society. If such persons are not kept behind bars for atleast few days, it gives wrong signal to the society. The status becomes immaterial when there are such serious allegations against such person.

Anil Sharma and Esarar (supra) were both in the matter of pre-arrest bail where the considerations are different than in a matter of cancellation of bail.

16. In Y. S. Jagan Mohan Reddy (supra) being an Appeal challenging the Order of the High Court dismissing the Petition filed by the Appellant for grant of bail, the Apex Court found on examining the details furnished by the CBI in the form of a status report and counter

affidavit of the Inspector General of Police and without expressing any opinion on the merits that at that stage, the release of the Appellant would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Moreover, unlike the contention on his behalf that he was in no way connected with the persons in power, the Apex Court was of the view that the apprehension raised by the CBI could not be lightly ignored considering the claim that the Appellant was the ultimate beneficiary and the prime conspirator in huge monetary transactions. The Apex Court further observed at paragraphs 34, 35 and 36 as below and in view of that matter, dismissed the Appeal :

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to

the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

36. Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal."

17. In *Puran* (supra), the Hon'ble Apex Court was particularly

concerned with the cancellation of bail in terms of Section 439 of Cr.P.C. and when it reiterated that giving reasons for granting bail to accused is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of merits of the case had not to be undertaken. The Additional Sessions Judge in that case had discussed the merits and demerits of the evidence and which aspect was deprecated by the High Court. It referred to the Judgment in *Dolat Ram & Ors. vs State of Haryana* [1995 (1) SCC 349], where it was held that generally speaking, the grounds for cancellation of bail, broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. These instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against the principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected. Furthermore, it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different

from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation and reiterated the principles laid down in Gurcharan Singh (supra).

18. In Nimmagadda Prasad (supra), the Hon'ble Apex Court held that where economic offences of huge magnitude affecting public money and property were involved, bail should not be granted. It restated the approach to be followed while granting bail and observed at paragraph 23 that the country has been seeing an alarming rise in white-collar crimes, which have affected the fibre of the country's economic structure for the last few years and that incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. It reiterated at paragraph 24 that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. Besides, Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge

loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

19. In the light of this Judgment and that in *Y. S. Jagan Mohan Reddy (supra)*, there is no basis in the contention of the learned Senior Counsel for the Respondent that the magnitude of the offences affecting public money did not constitute a serious offence while considering the aspect of bail or its rejection.

20. In *Narendra K. Amin (supra)*, the Apex Court spelt out that the parameters for cancellation of bail and grant of bail were different and the Court while dealing with the cancellation application, was required to find out whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration while granting bail. If so, the order granting bail would be perverse justifying cancellation. However, the Court should avoid re-appreciation of evidence in that process. In the facts of that case, the Appellant was charged with serious and heinous offences punishable under Sections 302 read with Section 120B of IPC. It was contended on his behalf that in the application for the cancellation of bail there was no reference to any supervening circumstance and only analysis of the materials which were considered by the trial Court to grant bail were highlighted. It was

also further contended that even if two views were possible, once the bail has been granted, it should not be cancelled. It considered the Judgment in *Puran and Gurcharan Singh* (supra).

21. Ramcharan (supra) held that bail can be cancelled on the existence of cogent and overwhelming circumstances but not on a re-appreciation of the facts of the case while reiterating the proposition that different considerations would have to be weighed while dealing with the application for grant of bail respectively.

22. In *Directorate of Revenue* (supra), the High Court of Delhi held that the general rule was that High Court will not ordinarily interfere with matters relating to bail which is subject to exceptions. It is permissible for a superior Court to consider not only the post bail conduct and supervening circumstances but also the facts and circumstances which prevailed at the time of grant of bail. It is also permissible for a superior Court to examine whether the Court which granted bail, took into consideration the material which was not relevant or germane or it granted bail without due application of mind. There was otherwise no allegation that the accused had tried to misuse the liberty or did not attend the Court or tried to influence any witness and therefore held that there was no compelling ground for setting aside the order while dealing with the Petition under Section 482 (2) of Cr.P.C.,

challenging the order whereby bail was granted to the Respondents by the Additional Chief Metropolitan Magistrate, New Delhi, and considered the Judgment in Dolat Ram as also that in Amarnath Tripathi (supra).

23. In Bhagirathsinh Judeja (supra), the Hon'ble Apex Court held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. In the brief facts, the learned Sessions Judge had granted bail which was set aside by the High Court. The Apex Court in its opinion observed that the learned Judge appeared to have misdirected himself while examining the question of directing cancellation of bail by interfering with the discretionary order of the Sessions Court. At the same time, it was observed that the only material considerations were whether the accused would be readily available for his trial or whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. The order made by the High Court was conspicuous by its silence on these two relevant considerations and in that view of the matter, felt a compelling necessity to interfere with the order made by the High Court allowing the Appeal and setting aside the order made

by the High Court.

24. Section 8-A of the MMDR Act, 1957 which has been introduced by the Act of 2015, dealing with the period of grant of a mining lease for minerals other than coal, lignite and atomic minerals contemplates in sub-clause (6) the due extension of the period of lease till 31.03.2020 with effect from the date of expiry of the period of renewal last made or till the completion of the renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with in view of the non-obstante clause with which sub-section (6) opens. In other words, as per the contention of Shri N. N. Sardesai, learned Senior Counsel for the Respondent, there is no basis in the contention of Shri S. R. Rivankar, learned Public Prosecutor that the mining lease was illegal in view of the earlier Judgment of the Hon'ble Apex Court. In view of this amendment and the deeming fiction attached to the renewal of leases, there appears force in the contention of Shri N. N. Sardesai, learned Senior Counsel that the mining lease was not illegal or rather that it stood renewed by virtue of the deeming fiction. The question which would loom large is whether as such there was illegal operation of mines and trading of iron ore between 2007 to 2012 as contended by Shri Rivankar, learned Public Prosecutor on behalf of the Applicant-State.

25. Section 4 of the MMDR Act provides for prospecting or mining operations to be under license or lease and sub-section (1) reads that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder. Sub-section 1(a) thereof provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder. Section 9 of the said Act provides for royalties in respect of mining leases and requires the holder of a mining lease granted before the commencement of the Act shall notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay the royalties in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

26. Section 21 provides for penalties in the nature of imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area in case

there is contravention of the provisions of sub-section (1) or sub-section 1A of Section 4 of the Act. Sub-section (4) thereof takes within its sweep that whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority, specially empowered in this behalf.

27. Rule 37 of the Mineral Concession Rules places an embargo on the right of a lessee to assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein without the previous consent in writing of the State Government and/or without the previous approval of the Central Government. It also places an embargo on the lessee not to enter into or make any bonafide arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee. Rule 24A deals with the renewal of mining lease and provides that an application for such renewal of a mining lease will be made to the State Government in the prescribed form J at least twenty four months before the date on which the lease is due to expire from such

authority of the State Government may specify in this behalf.

28. The Power of Attorney dated 23.02.2005 executed by Georgina Figueiredo in favour of the Respondent reveals amongst others that he was nominated, appointed and constituted by her as her true and lawful attorney to work, manage and develop the mine bearing TC No.65 of 1951 situated at Kurpem and also to raise extract and sell ores or any other permitted minerals on her behalf apart from carrying on, managing, conducting and supervising the mining operations on her behalf amongst others. Hence, the contention of Shri Rivankar learned Public Prosecutor that he had no authorisation on her behalf cannot stand the test of legal scrutiny. A perusal of the statement of Maria Figueiredo reveals that the Respondent had come to her with his brothers at her house in Loutolim and compelled her to sign some documents with regard to the mining lease, that he had been approaching her periodically, handing over cash to her and that she was making deposits in the Bank apart from bank to bank transfers made by the Respondent in her account. Even in so far as the letter of extension of the mining lease was concerned, she had revealed that the Respondent had come to her house and obtained her signatures without allowing her to read its contents. Nonetheless, she also revealed that their family was paid for the possession of the property by the Respondent but not towards either the production or sale of iron ore.

Her statement rather gives a fair induction of the modus operandi adopted by the Respondent to operate the mining concession/lease based on the Power of Attorney executed in his favour. In any event and on her statement, no complaint was lodged by her against him and therefore her statement remains at that.

29. The profit and loss account relied upon by the Applicant-State of Imran Traders clearly reflects the expenses incurred by the firm towards the mining operations with the substantial expense being towards the payment of royalty charges unlike his disclosure that he was a mere trader. Therefore the contention of Shri S. R. Rivankar, learned Public Prosecutor that there was an illegal transfer of lease and in contravention of the Act and Rules framed thereunder and or that there was theft of iron ore cannot stand the test of scrutiny.

30. It is no doubt a matter of record and not in dispute on behalf of the Applicant-State that the Respondent who was arrested on 12.9.2017 was released on bail on 15.09.2017 while the application for the cancellation of bail was moved only on 30.10.2017 i.e. 45 days thereafter. It is equally a matter of record that the conditions on which he was secured with the order of bail were modified by the learned Special Judge by his order dated 06.10.2017 and even thereafter the Respondent was not called to the Police Station any time by the

Applicant in connection with the investigation in the said crime. In this backdrop, there appears force in the contention of Shri Nitin Sardesai, learned Senior Counsel that there was no explanation on behalf of the State for a lapse of 55 days to seek for the cancellation of bail granted in favour of the Respondent on 15.09.2017. It was also not the case of the Applicant-State that the Respondent had violated the terms of bail or in any manner hindered the course of investigation or brought influence or any of the witnesses including the Complainant while he was at large, or bail. It was also not the case of the Applicant-State that he was called upon for interrogation at any time after the order of bail on 15.09.2017 and/or its modification vide the order dated 06.10.2017. All these aspects assume significance since the Applicant-State now seeks the cancellation of bail on the ground that there has been a jurisdictional error by the Trial Court in securing him with the order of bail.

31. Shri S. R. Rivankar learned Public Prosecutor invited attention to the impugned Order at Paras 13, 14 and 16 where the learned Sessions Judge had given a clear finding that the mining activities were conducted by the Respondent personally and raised a poser whether the present Respondent was required to be detained in custody, yet did not answer affirmatively in favour of the State and ought to have allowed the Investigating Officer to conduct custodial interrogation. He next adverted to the finding at para 19 of the

impugned Order where the learned Judge had made observations that it could not be said that he had not conspired to commit the illegal acts and yet had not ordered his detention. The learned Public Prosecutor made pertinent reference to the observations in the impugned Order and the findings rendered to the contrary by the learned Special Judge and contended that there was perversity and illegality in the order of the Trial Court and therefore the bail had to be cancelled. At the outset it cannot be overlooked that this Court is not sitting in Appeal over the order passed by the learned Special Judge. Quite on the contrary, it is tasked with the duty to consider whether the grounds urged on behalf of the Applicant-State warrant the cancellation of bail for which the parameters are distinct and different then those involved in the grant of bail. Since this Court is not sitting in Appeal over the order passed by the learned Special Judge and even otherwise the order on its proper appreciation reveals the exercise of discretion by the learned Special Judge, there is no scope for interference with the order when such discretion has been exercised by the learned Special Judge on an appraisal of all the material referred to by the learned Public Prosecutor and the defence before him.

32. It is otherwise apparent that the State had apparently not taken any action to determine the lease of Maria Figueiredo. There was no material shown from the records to invoke the provisions of the Corruption Act particularly against the Respondent. Even on a

consideration of the Act and the Rules framed thereunder, there is no basis in the contention of Shri S. R. Rivankar, learned Public Prosecutor that there was transfer of lease involved in breach of Rule 37 of the Mineral Concession Rules, 1960. In any event, Rule 37 thereof would apply to the lessee and not to the Respondent who was admittedly not a lessee but operating the lease under a Power of Attorney and as an agent of the original lessee. On a consideration of the various Judgments relied upon on behalf of the State and those relied upon on behalf of the Respondent, there is no compelling ground for setting aside the order when it is not the case of the Applicants that the Respondent has tried to misuse the liberty or tried to influence any of the witnesses or otherwise violated the terms of bail. As held by the Hon'ble Apex Court, there are neither cogent nor overwhelming circumstances to make an order for cancellation of bail.

33. In that view of the matter, there is no case made out for the cancellation of bail and therefore the application is dismissed.

**NUTAN D. SARDESSAI, J.**

arp/\*