

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.477 OF 2017

IN

BAIL APPLICATION NO.54 OF 2017

Dr.Padmaja Sunil Patil ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Mr.Vaibhav G. Bagade, Advocate for the Applicant.

Ms.P.P.Shinde, APP for the Respondent No.1/State.

Mr.Girish Kulkarni with Mr.Shekhar Ingawale i/b. Mrunmai Kulkarni, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 28th NOVEMBER 2017.

P.C. :

1 This is an application for cancellation of bail granted by this Court to respondent No.2/accused Mandar Ratnakar Chogle vide Order dated 11th January 2017 passed in Criminal Bail Application No.54 of 2017 filed by him. By this Order, respondent No.2/Mandar Ratnakar Chogle was directed to be enlarged on bail on furnishing cash bail/presenting demand draft/pay order in the sum of Rs.50,000/- with one or more solvent surety in the like amount. The application is moved by First Informant Dr.Padmaja

Sunil Patil, who happens to be sister of respondent No.2/Mandar Ratnakar Chogle.

2 Heard the learned Advocate appearing for the applicant/First Informant - Dr.Padmaja Sunil Patil. He took me through the entire Order dated 11th January 2017 passed by this Court and urged that the bail was granted to respondent No.2/accused Mandar Ratnakar Chogle solely on the basis of consent terms executed on his instructions by his mother as well as his wife. The learned Advocate argued that clause No.(7) of the consent terms entitles the First Informant to apply for cancellation of bail if there is failure on the part of the accused to fulfill the conditions agreed between the parties. The learned Advocate for the applicant/First Informant then pointed out the letter dated 28th February 2017 issued by the respondent No.2/Mandar Chogle to his Advocate and argued that averments made therein are totally incorrect. The learned Advocate further argued that so called Will of deceased father was never disclosed to the applicant prior to passing of the Order dated 11th January 2017 by this Court granting bail to the respondent No.2. The learned Advocate for the applicant further argued that there is complete violation of the consent terms executed in order to get respondent No.2/accused Mandar released from the judicial custody and as the Order directing his release on bail is clearly based on the consent terms, bail granted to the respondent No.2/accused needs to be

cancelled. The learned Advocate further argued that the suit as well as Probate Petition was filed subsequently and those are in no way concerned with the issues involved in the present application. The learned Advocate for the applicant placed reliance on the Order dated 10th August 2011 passed by this Court in Criminal Application No.106 of 2011 between ***Mahesh Thakkar @ Mahes Manubhai Gadhai v. The State of Maharashtra & Anr.*** as well as the Judgment of the Honourable Delhi High Court in ***Manish Bajaj v. The State*** reported in II (2007) DMC 408 to urge that if the Order granting bail is passed on the basis of assurance given by the accused and if such assurance is breached then the bail so obtained by the accused by giving solemn undertaking to the Court needs to be cancelled.

3 I heard the learned Advocate appearing for the respondent No.2/Accused Mandar Chogle. By relying on the Judgment in the matter of ***Biman Chatterjee v. Sanchita Chatterjee & Anr.*** reported in (2004) 3 Supreme Court Cases 388, the learned Advocate argued that bail is granted according to the provisions of the Code of Criminal Procedure and those provisions do not contemplate any assurance or promise. Therefore, in submission of the learned Advocate for the respondent No.2/accused, even if it is assumed that there is breach of undertaking/consent terms, then also bail granted to the respondent No.2/accused cannot be cancelled.

4 The learned Advocate appearing for the respondent No.2/accused placed reliance on the Order dated 5th July 2016 passed by the Division Bench of this Court in Criminal Application No.688 of 2015 filed by the respondent No.2/accused for quashing the FIR lodged by the applicant herein i.e. the First Informant. The learned Advocate argued that the subject of alleged forgery and the offence punishable under Section 467 allegedly committed by the respondent No.2/accused was considered by the Division Bench of this Court and the Division Bench observed that there is a strong *prima facie* case in favour of the respondent No.2/accused. With this, filing of the charge-sheet is stayed by the Division Bench of this Court. With this it is argued that when in the petition challenging the subject FIR these are observations in favour of the accused, he cannot again be taken in custody.

5 The learned Advocate for the respondent No.2/accused further argued that Ratnakar Chogle is father of the applicant as well as the respondent No.2. The applicant/First Informant had filed a suit bearing No.11 of 2016 before this Court for partition and declaration. The learned Advocate drew my attention to the affidavit opposing the Notice of Motion filed in the said suit by Ratnakar Chogle – father of the parties to demonstrate that the subject properties are self-acquired properties of Ratnakar Chogle. It is further argued that by executing Will and then by correcting it by executing a codicil, those self-acquired properties

were bequeathed by the deceased father in favour of the respondent No.2/accused and, therefore, unless and until the Will is probated, the consent terms cannot be fulfilled. In submissions of the learned Advocate appearing for the respondent No.2/accused, in such circumstances, the bail granted to the respondent No.2 cannot be cancelled.

6 The learned Additional Public Prosecutor argued that the State has not filed the application for cancellation of bail.

7 The law on the aspect of cancellation of bail is no more *res integra*. In the matter of ***Bhagirathsinh Judeja v. State of Gujarat*** reported in **AIR 1984 Supreme Court 372**, the Honourable Apex Court observed in paragraph 6 as follows :

“6. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available

for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

8 In the matter of ***Subhendu Mishra v Subrat Kumar Mishra And Anr.*** reported in **AIR 1999 SC 3026**, the Honourable Apex Court has observed that bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. In the matter of ***Mahesh Thakkar @ Mahes Manubhai Gadhai*** (supra) relied by the learned Advocate appearing for the applicant, the accused therein had filed an application for grant of bail. Bail was granted by imposing certain conditions regarding payment of amount. The outer limit was fixed in making such payment. The accused failed to comply with the conditions on which the bail was granted. The Court of sessions therefore cancelled the bail. The said order was impugned in that matter by the accused. The learned Single Judge of this Court while rejecting the challenge to the cancellation of bail of the accused, has observed that the Order granting bail itself stipulates that the bail would automatically stands cancelled on failure to abide by the conditions. It is further observed in the said matter that the said Order was not challenged by the accused, but he further confirmed the correctness of the

said Order by repeating his assurance by filling an application for extension of time to repay the amount. The learned Single Judge further held that while granting bail to the accused in that case, the merits were not examined because the accused had offered to pay the amount to the aggrieved person. In the said matter, Judgment of the Honourable Apex Court in the matter of **Biman Chatterjee** (supra) was also considered.

9 In the matter of **Manish Bajaj** (supra) relied by the learned Advocate appearing for the applicant/First Informant, it was held that accused Manish Bajaj cannot be allowed to wriggle out of the compromise on a false and too technical ground when for the purpose of grant of bail to himself and his family members, he agreed to the settlement deed.

10 In the matter if **Biman Chatterjee** (supra) relied by the learned Advocate for the respondent No.2/accused, the Honourable Apex Court has held thus in paragraph 7 of its Judgment :

“7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in

our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law."

11 Keeping in mind the law on the subject let us examine the case in hand. On 18/05/2014, the applicant herein has lodged the FIR against her brother i.e. respondent No.2/accused Mandar Chogle, which has resulted in registration of Crime No.177 of 2014 with Borivali East Police Station. On transfer to the Economic Offence Wing, the same came to be registered as Crime No.56 of 2014. Allegations in the FIR were to the effect that there are several ancestral properties of the family and the respondent No.2/accused indulged in forging the documents in the nature of release deed by the applicant/First Informant as well as her

daughter named Nrupa. This was done by inserting few more pages in the document executed before the Sub-Registrar and by changing the header of those pages. The FIR was registered for the offences punishable under Sections 420, 465, 467, 468, 471, 120-B of the Indian Penal Code.

12 It is seen from the record that the respondent No.2/accused moved an application for grant of anticipatory bail and the same was rejected even by this Court. Subsequently, the respondent No.2/accused Mandar came to be arrested. His bail application was rejected by the Sessions Court and that is how he preferred an application for bail bearing No.54 of 2017 before this Court which was ultimately allowed vide Order dated 11th January 2017.

13 Let us now examine whether the said Order dated 11th January 2017 granting bail to the accused i.e. respondent No.2 Mandar came to be passed only on the basis of the compromise entered into between the parties and whether it contains a stipulation that the bail would be cancelled automatically if the parties failed to adhere to the consent terms. It is case of the applicant/First Informant that bail was granted purely on the basis of consent terms executed on the basis of instructions given by respondent No.2/accused Mandar and those have not been compiled with. As against this, it is seen that respondent No.2/accused came up with a case that when he was languishing

in the jail under the judicial custody remand, his mother, who is not knowing English, and his wife, who was in total shock, was compelled to execute and sign the consent terms. This is the purport of the letter dated 28th February 2017 allegedly sent by the accused to his Advocate, on which the First Informant is placing heavy reliance.

14 Be that as it may, we will have to peruse the Order dated 11th January 2017 in order to ascertain what was considered by this Court while releasing the respondent No.2/accused on bail. In paragraph 4 of the Order dated 11th January 2017 releasing the respondent No.2/accused on bail, this Court has observed that the respondent No.2/accused has filed a petition for quashing the FIR lodged by the First Informant (applicant herein) and the Division Bench of this Court issued rule and by way of interim relief, it is directed that the investigation shall continue, but the charge-sheet shall not be filed without leave of the Court. Thus, the fact of issuing rule and granting interim relief of not filing the charge-sheet by the Division Bench of this Court on the petition of the respondent No.2/accused was one of the factor, which was considered by this Court while deciding the Bail Application bearing No.54 of 2017 and granting bail to the respondent No.2/accused. In next paragraph, i.e. paragraph No.5 of the Order dated 11th January 2017, this Court has observed that the case in hand primarily appears to be a case of family dispute

between the brother and the sister over the ancestral property. This was the second consideration for granting bail to the accused. The third one was the fact that in order to maintain family ties and good relations with the First Informant, who happens to be sister of the applicant therein i.e. the accused, the consent terms are being drawn. The fourth consideration which seems to weigh the mind of this Court while granting the Criminal Bail Application bearing No.54 of 2017 by directing release of the accused was pendency of the civil proceedings and the time that will be taken for its disposal. This aspect of the matter is noted in paragraphs 4 and 5 of the Order dated 11th January 2017. This Court has observed that the First Informant had filed a suit for declaration and the civil proceedings may take its own course. Thereafter, the consent terms were taken on record. Lastly, in paragraph 7, cumulative effect of all these aspects was considered in following words. Para 7 of the order dated 11th January 2017 reads thus :

“7. Taking into consideration the facts of the case, the relations between the parties and the fact that they have arrived at an amicable settlement, this Court is inclined to enlarge the applicant on bail.”

15 Observations of this Court found in paragraph 7 of the Order dated 11th January 2017 makes it clear that facts of the case as noted by the Court and reproduced in foregoing paragraphs of this Order, relations between the parties and lastly, the fact that

they have arrived at an amicable settlement, were considered to be factors in releasing the applicant therein i.e. respondent No.2/accused on bail. In this view of the matter, careful scrutiny of the Order dated 11th January 2017 does not permit me to hold that the respondent No.2/accused was released on bail only for the reason that there was compromise between the parties, which resulted in drawing the consent terms. In this view of the matter, judgment of this Court in the matter of ***Mahesh Thakkar*** (supra) as well as that of Delhi High Court in the matter of ***Manish Bajaj*** (supra) are of no consequence. The Order dated 11th January 2017 passed by this Court does not show that there is stipulation therein to the effect that on failure to comply with consent terms (Exhibit 'X') by the parties, liberty of the applicant therein i.e. Mandar Chogle would be curtailed by cancellation of bail granted to him. No doubt the consent terms empowers the First Informant to move for cancellation of bail. But the Court is required to decide such application by considering all relevant facts and not mechanically.

16 That apart, it is also obvious that the FIR lodged by First Informant Dr.Padmaja Patil against the respondent No.2/accused was subject matter of consideration by the Division Bench of this Court in Criminal Application No.688 of 2015 and following are the observations of the Division Bench of this Court found in Order dated 5th July 2015 which reads thus:

"1. Perused the investigation papers. Now the 2nd Respondent has filed a Suit for declaration. A strong prima facie case is made out. Hence, we issue Rule. Learned Advocate on record for 2nd Respondent waives service. The learned APP waives service."

Bare perusal of this Order shows that the Division Bench of this Court found that a strong *prima facie* case is made out by the respondent No.2/accused for quashing the FIR lodged by the applicant herein/First Informant Dr. Padmaja Patil. This is a relevant factor for deciding whether the respondent No.2/accused in the wake of favourable Order by the Division Bench of this Court, needs to be put behind the bars as a pre-trial detention.

17 It is also pointed out that there was a Will executed by Ratnakar Chogle i.e. father of the applicant herein and respondent No.2/accused Mandar on 24th July 2004, which was clarified by a Codicil allegedly executed on 29th May 2009. It is seen that the respondent No.2/accused had filed a petition for probate of the last Will and Codicil of his father Ratnakar Chogle in this Court and the parties have reported that the same is now registered as a suit and is pending disposal by this Court. The properties mentioned in the consent terms are subject matter of this suit and the matter is still *subjudice*.

18 It is seen that even the applicant/First Informant Dr. Padmaja Patil has filed a suit bearing No.11 of 2016 before this Court for declaration that she is coparcener of joint Hindu Undivided Family of Vasant Rao Chogle and Ratnakar Chogle. She is claiming partition as one of the relief. By the said suit, the applicant/First informant has categorically prayed for declaration that the purported Release Deed registered on 14th November 2013 and allegedly notarized Deed of Release dated 12th November 2013 be declared illegal, null and void. These documents are also the subject matter of the subject FIR lodged by the plaintiff in the suit i.e. Dr.Padmaja Patil. In the said suit, there is challenge to the purported Release Deeds dated 12th November 2013, 29th May 2009 and 12th November 2013. It is, therefore, clear that the subject matter of the FIR is also pending adjudication in the civil litigation between the parties. Ratnakar Chogle – father of the parties i.e. the applicant and respondent No.2 herein had filed a reply to the Notice of Motion in the said suit claiming the property to be his self-acquired property by denying its status as property of the joint family. He has come up with a stand in his reply that in a suit bearing No.2359 of 1999 filed by him for enforcing the family agreement, the parties arrived at a compromise and the consent terms were filed in the High Court by which he acquired the respective share of each legal heirs as against the consideration paid by him under the consent terms. That suit is still pending for adjudication.

19 In the light of foregoing discussion, I do not find any cogent or overwhelming circumstance that are necessary for cancelling the bail granted to the respondent No.2/accused by this Court vide Order dated 11th January 2017 in Criminal Bail Application No.54 of 2017. The application is, therefore, rejected.

(A.M.BADAR J.)