

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 825 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 1874 OF 2017**

Jabar Sherkhan Pathan

...Applicant
(Original Complainant)

Versus

1. Sarfaraz Sharif Mulla,
2. The State of Maharashtra

...Respondents

Mr. Adnan Sakharkar h/f Mr. Amin Solkar for the Applicant

Mr. Abhishek Yende i/b Mr. S. H. Nimbalkar for the Respondent No.1

Mr. Ajay S. Patil, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 7th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule made returnable forthwith, by consent. Learned Counsel waives service of notice on behalf of respondent No.1. Learned A.P.P waives service of notice on behalf of respondent No.2-State.

3. By consent, matter is taken up for hearing, forthwith.
4. By this application, the applicant seeks cancellation of the bail granted to the respondent No.1-Sarfaraz Sharif Mulla vide order dated 28th August, 2017.
5. Learned Counsel for the applicant (original complainant) submits that the respondent No. 1 had suppressed from this Court, that the trial had commenced and that three witnesses were examined, when the order dated 28th August, 2017 was passed.
6. Learned Counsel for the respondent No. 1 states that they were not instructed by the respondent No. 1 or his family members, that the trial had commenced and that three witnesses had been examined. Learned A.P.P also has not bothered to take instructions with regard to the commencement of the trial and had proceeded with the matter, on the basis of the charge-sheet. Learned A.P.P had not sought time to take instructions to find out the stage, at which the trial was. Pursuant to thereto, on 28th

August, 2017, this Court (Coram : Revati Mohite Dere, J.) enlarged the applicant on bail.

7. Learned Counsel for the respondent No. 1 informs that the applicant has not been released subsequent to the said order dated 28th August, 2017. There is no reason to doubt the said statement.

8. It appears that the trial had commenced and that three witnesses have been examined till date, and that the complainant is presently in the witness box. The respondent No. 1 had not instructed the Advocates, when Bail Application No. 1874 of 2017 came up for admission. Learned Counsel for the respondent No. 1 submits, that since respondent No.1's mother was in the hospital, none had come to instruct them and as such, they were not aware that the trial had commenced. Learned Counsel for the respondent No. 1 tender their apology. Apology accepted.

8. Considering the respondent No. 1 had suppressed from this Court and their instructing Advocate, the fact, that the trial had commenced

and that three witnesses had been examined and that the complainant was in the witness box, the bail granted to the respondent No. 1 vide order dated 28th August, 2017, ought to be cancelled, forthwith. Accordingly, the application is allowed in terms of prayer clause (a). The bail granted to the respondent No. 1-Sarfaraz Sharif Mulla, vide order dated 28th August, 2017, passed in Criminal Bail Application No. 1874 of 2017, stands cancelled.

9. Application is accordingly disposed of.
10. Registry to communicate the above order to the learned Judge. Learned A.P.P to also communicate the above order to the concerned Jailor.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.