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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1356 OF 2016

Jiten Maheshbhai Yadav

... Applicant

V/s.

The Senior Inspector of Police

... Respondent

Mr. Rizwan Merchant a/w Swapnil Wagh i/b Ms. Swapna Kode for applicant.

Mr. Nilesh Pawskar, Special P.P. for Respondent No.1.

Ms. P.P. Shinde, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 24th NOVEMBER 2017

P.C.:

1] This is an application under Section 482 of Cr. P.C. impugning the Order dated 8th November 2016 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Mumbai in Misc. Application No.158 of 2015 in Bail Application No.515 of 2015 in CR No.352 of 2015.

2] The applicant is an accused in CR No. 352 of 2015 dated 10.10.2015 registered with Kandivali Police Station, Mumbai under Sections 376, 420, 323 of the Indian Penal Code. The first information

report is lodged by the respondent No.2. The applicant was arrested on 10.10.2015 and by an Order dated 5th November 2015, the Trial Court directed him to be released on bail by imposing certain conditions. The Condition No.7 imposed upon the applicant by the Trial Court stipulates that the applicant shall not leave the jurisdiction of Trial Court Court without prior permission of it.

3] The record indicates that, without seeking prior permission of the Trial Court, applicant left its jurisdiction on 6.12.2015 for performing his marriage and returned to Mumbai late in the evening on the same day. The respondent No.2 therefore filed an application under Section 439(2) of Cr. P.C. dated 22.12.2015 for cancellation of bail of the applicant on the ground of breach of said condition.

Learned Trial Court by the impugned Order dated 8th November 2016 was pleased to cancel the bail of the applicant. In the premise the present application is preferred by the applicant.

4] The record further indicates that, during the course of arguments before the Trial Court in Bail Application No.515 of 2015, it was the specific case of the applicant that he on many occasions proposed the respondent No.2, but she never responded to his marriage proposal and

thereafter the marriage of the applicant came to be fixed/arranged and was scheduled in the month of December 2015.

As noted earlier, the applicant without seeking prior permission of the Trial Court, left its jurisdiction on 6.12.2015 performing his marriage and returned back to Mumbai late in the evening on the same day. Indubitably, the applicant committed breach of the aforesaid condition imposed by the Trial Court, however, it is to be noted here that, the applicant in his pleadings before the Trial Court Misc. Application No.158 of 2015 and before this Court in has categorically admitted the said fact.

5] For the reasons stated in the pleadings of Bail Application No.515 of 2015 and admitted by the applicant, the default committed by him can be condoned, however for the said default the applicant will have to be saddled with exemplary costs. The record indicates that after passing the impugned Order, the applicant preferred present application on 16.11.2016 and since 21.11.2016 the impugned Order is stayed by this Court. It is submitted that, there is no report of further breach of any condition imposed by the Trial Court by its Order dated 5.11.2015 by the applicant.

In view thereof, I am inclined to interfere with the impugned Order passed by the Trial Court dated 5.11.2015, subject to condition that the applicant shall pay a cost of Rs.25,000/- to the High Court Legal Aid Committee within a period of 2 weeks from today. The payment of cost is condition precedent for quashing and setting aside the impugned Order.

6] In view of the peculiar facts and circumstances of the present case, Application is allowed in terms of prayer clause (b).

It is however made clear that, the condonation of breach of the aforesaid condition shall not be treated as a precedent for further breach of any of the condition by the applicant and failure thereof shall further attract the provisions of cancellation of bail.

(A.S.GADKARI, J.)