

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (ABA) NO.209 OF 2017**

**Rahul s/o Shankarrao Madiwale**

**..VS..**

**The State of Maharashtra, through Police Station Officer, Police Station,**  
**Civil Lines, Akola and anr**

.....  
Office Notes, Office Memoranda of Coram,  
appearances, Court orders or directions  
and Registrar's orders  
.....

Court's or Judge's Order

Shri A.M. Sudame, Counsel for the applicant.  
Shri A.D. Sonak, Addl.P.P. for the State.

**CORAM : N.W. SAMBRE, J.**  
**DATED : APRIL 12, 2017.**

Heard learned counsel Shri A.M. Sudame for  
the applicant and learned Additional Public Prosecutor  
Shri A.D. Sonak for the non-applicant/State.

This is an application under Section 438 of  
the Code of Criminal Procedure for grant of anticipatory  
bail in connection with Crime No.154 of 2014 registered  
by Police Station, Civil Lines, Akola for the offences  
punishable under Sections 408 and 420 of the Indian  
Penal Code and to recall of order dated 17.3.2017.

This Court, while dealing with prayer for  
pre-arrest bail of present applicant, vide order dated  
19.1.2015 passed in Criminal Application No.605 of  
2014, was pleased to order release of applicant in the  
event of his arrest, on following conditions, thus:

*“In the result, the application is allowed. The interim order passed by this Court on 28th November, 2014 is confirmed with a condition that the applicant to attend Civil Lines Police Station, Akola on fourth Sunday of this month and thereafter on every second and fourth Sunday from 09:00 a.m. to 12:00 noon, till filing of the charge-sheet.”*

Since conditions thereof were not complied with, complainant preferred an application being Criminal Application No.38 of 2015 under Section 439(2) for cancellation of bail. This Court by order dated 17.3.2017 was pleased to cancel the bail of applicant in aforementioned crime on the ground that applicant has not complied with conditions, which were incorporated while releasing him on bail on 19.1.2015 and his non-cooperation with the investigating officer.

It is subsequent thereto, present application is moved.

Learned counsel Shri A.M. Sudame for the applicant inviting my attention to observations made in paragraph No.5 of order of cancellation of bail has urged that correct factual matrix was not brought to notice of this Court. According to him, investigation in the matter was already over when this Court has ordered cancellation of bail on 17.1.2017. In addition, learned counsel has urged that provisions of Section

362 of the Code of Criminal Procedure will not be attracted in the present case as order is passed by this Court without considering correct factual matrix as complainant and the State have suppressed material facts as regards filing of charge-sheet against applicant accused person. Learned counsel relies upon judgment of the Honourable Apex Court in the case of State of Punjab ..vs.. Davinder Pal Singh Bullar and others, reported at (2011)14 SCC 770 so as to canvass that in the above referred circumstances bar under Section 362 of the Code of Criminal Procedure will not be attracted and it will be open for this Court to consider prayer for grant of bail afresh.

Learned Additional Public Prosecutor Shri A.D. Sonak for the State opposes the application on the ground that applicant has not demonstrated as to how he has complied with conditions incorporated in order dated 19.1.2015 while releasing applicant on pre-arrest bail. Learned Additional Public Prosecutor further urges that non-filing of charge-sheet is not only the issue which is taken into account for cancellation of bail as according to him, non-compliance of conditions of bail is also considered by this Court.

Having considered rival submissions, it is required to be noted that present applicant was very much heard when this Court on 17.3.2017 passed an order of cancellation of bail. The issue, as regards

completion of investigation and filing of charge-sheet was not brought to the notice of this Court by applicant accused at relevant time. Apart from above, compliance of conditions of bail is also not demonstrated before this Court on earlier occasion that is while cancelling his bail on 17.3.2017 so also today when matter is being heard. Though learned counsel Shri A.M. Sudame for the applicant has made strenuous efforts to demonstrate that whatever best could have been done for compliance of conditions of bail that was done, I hardly see any satisfactory explanation to accept his submission that applicant has complied with conditions of bail. No material to that effect is placed on record. Apart from above, applicant during his bail has involved himself in an another crime which is also formed to be an additional ground for cancellation of his bail.

In this background, in my opinion, no case for grant of pre-arrest bail is made out. As such, application fails and is rejected.

Accordingly, the criminal application is disposed of.

**JUDGE**

!! BRW !!

...../-