

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

CRIMINAL APPLICATION No. 12 of 2015

Ravindra Eknath Kumawat	..Applicant.
Vs	
State of Maharashtra	..Respondent.

Mr. Subhash Jha a/with Ms. Sanjana Pardeshi a/with H.Mishra
I/by Law Global Advocates for the applicant.
Mr. Pawan Mali I/by K.P.Mali for Respondent No.1.
Mr. Ajay Patil, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATE : 26TH SEPTEMBER, 2018**

P.C:-

- 1) This is an application for cancellation of bail granted to the respondent no.1 by the learned additional Sessions Judge, Pune vide orders dated 4/12/2014 in Criminal Application No.3599/2014.
- 2) Heard Mr. Jha, learned counsel for the applicant, Mr. Pawan Mali, learned counsel for the intervener-accused/respondent No.1 and Mr. Ajay Patil, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3) The record indicates that by order dated 4/12/2014 in Criminal Misc. Application No. 3599 of 2014, the learned Additional Sessions Judge, Pune had granted bail to the respondent No.1 who was arrested in Cr. No. 259 of 2013 registered with Bandgarden Police Station, Pune. It appears that the respondent No.1 had stated before the learned Additional Sessions Judge that he was ready to file an undertaking before the trial Court that he would deliver possession of seven flats in favour of the applicant/complainant on completion of construction of the proposed building after getting revised construction permission or in the alternative he would pay compensation to the applicant/complainant. While allowing the application under Section 439 Cr.P.C., the learned Additional Sessions Judge, Pune had directed the respondent No.1 to file such an undertaking before the Trial Court within three days from the date of release from the jail. It is not in dispute that the respondent No.1 accordingly filed such an undertaking before the trial Court. A copy of the said undertaking is annexed to this application at page 86.

4) The applicant has sought cancellation of bail on the ground that the order is illegal, based on irrelevant material and

that the learned Judge has exceeded the jurisdiction while granting bail to the respondent No.1-accused. Suffice it to say that there is distinction between the parameters for grant of bail and cancellation of bail. Bail once granted cannot be canceled mechanically, unless the order is perverse, passed on irrelevant material or in view of supervening circumstances, which warrant such cancellation. In the instant case, the order is neither illegal / perverse nor there are any supervening circumstances which warrant cancellation of bail.

5) Shri Jha, the learned counsel for the applicant claims that respondent no.1 herein has not given possession of the flats as per undertaking given before the Court. He therefore contends that the bail needs to be canceled for non-compliance of the undertaking given to the Court. The learned counsel for the respondent No.1 has submitted that the applicant/complainant herein has created several hurdles in completion of the construction of the building. He submits that the applicant had first filed a suit for declaration that the sale dated 5/11/2011 is null and void. The applicant had also sought to restrain the respondent from dealing with the property and constructing any building in the said property. He submits that

the applicant/complainant had also filed a writ petition No. 274 of 2015 alleging that the respondent no.1 had carried out several illegal construction and had sought direction against Pune Municipal Council to take action under Section 259 and 260 of the Maharashtra Provincial Municipal Corporation Act. The learned counsel for the applicant submits that the said writ petition was disposed of on 18/7/2017. He submits that the corporation had not entertained application for sanction of the revised plan submitted by respondent in view of the pendency of the said writ petition and that the file was processed only after disposal of the writ petition. The respondent No. 1 has filed his affidavit, where he has given in detail the steps taken by him to complete the construction. The various documents placed on record clearly indicate that the respondent has complied with several requirements, viz., payment of property tax, provisional fire NOC etc. and the application for revised plan is under process. The above circumstances clearly indicate that the respondent had no intention of violating the undertaking given to the Court. The applicant has therefore not made out any case for cancellation of bail.

6) Furthermore, the record reveals that charge is

already framed and the trial could not commence as the applicant herein had failed to appear before the Court despite service of summons.

7) In the light of the above, this would not be a case for cancellation of bail.

8) Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)