

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 669 OF 2018
IN
CRIMINAL APPEAL NO. 319 OF 2017

Shri. Subhash Raghuvir Jaiswal

Age : 69 years, Occ: :Legal Profession,

Residing at 1601/02, Belscot Tower,

Lokhandwala Complex, Andheri (W),

Mumbai-400 053.

....Applicant

(Intervenor)

IN THE MATTER BETWEEN :

Dharmesh @ Dharmendra Sant

Bakshi Sing, Age :Adult,

At present at Yerwada Central

Prison, Pune.

....Appellant

(Orig. Accused no.1)

V/s.

The State of Maharashtra

....Respondent

(Orig. Complainant)

* * * *

Mrs. Anita Agarwal i/by. Ms. Sucheta D. Ghaisas, Advocate for
the appellant.

Mr. Arfan Sait, APP for the State.

**CORAM :- SMT. V.K. TAHILRAMANI,
(HON'BLE ACTING CHIEF JUSTICE), &
SANDEEP K. SHINDE, JJ.**

DATE :- 26TH JULY, 2018.

ORAL ORDER (PER : SANDEEP K. SHINDE, J) :

1. This application filed under Sections 439(2) read with Section 482 of the Criminal Procedure Code is preferred by the original complainant, at whose instance Crime No. 136 of 2014 was registered against the accused-appellant, herein (hereinafter called as 'the appellant') under Section 302 read with Sections 34, 397 and 120(B) of the Indian Penal Code. The appellant and the other two accused were tried in Sessions Case No. 550 of 2014, wherein appellant came to be convicted and sentenced to undergo rigorous imprisonment for life; other two accused were acquitted, vide judgment and order dated 17th February, 2017.

2. Against the conviction and sentence, appellant has preferred Appeal No. 319 of 2017 which has been admitted by this Court on 7th June, 2017. Alongwith the Appeal, he had filed an Application No. 535 of 2017 for suspension of sentence

and to release him on bail, pending Appeal.

3. That after hearing the appellant and the Learned APP for the State, by reasoned order dated 13th July, 2017 the Division Bench of this Court directed to release the appellant, on bail upon certain terms and conditions.

4. The applicant-Intervenor is the original complainant, vide this application, seeks to recall and cancel the order dated 13th July, 2017 vide which the appellant was granted bail, pending Appeal.

5. Heard Mrs. Agarwal, Learned Counsel appearing for the applicant-Intervenor and Mr. Sait, Learned APP for the State.

6. We, have perused the application and the grounds urged therein. The applicant-Intervenor seeks to recall the order dated 13th July, 2017 on merits. Grounds no.1 to 10 urged in the application, calls upon this Court to reconsider the earlier order dated 13th July, 2017 on merits, and as such sought review of it.

7. Mrs. Agarwal, Learned Counsel appearing for the appellant has urged that, though the appellant was directed to be released on bail, till date he has not availed bail. She would urge and press grounds no.1 to 10 and seeks recall of order dated 13th July, 2017 on merits. She would further submit that the appellant is a resident of remote place in Uttar Pradesh and if he is released on bail, it would be difficult to trace him, if the Appeal is dismissed. She would therefore pray that, the application may be allowed and the order dated 13th July, 2017 be recalled.

8. Mrs. Agarwal, in support of her submissions has relied on the following decisions :

(i) Narendra K. Amin (Dr.) Versus. State of Gujarat and Another, (2008) 13 Supreme Court Cases 584.

(ii) Kanaka Rekha Naik Versus. Manoj Kumar Pradhan and Another, (2011) 4 Supreme Court Cases 596.

9. Infact, the applicant is seeking review of the

order dated 13th July, 2017 as could be seen from Grounds no.1 to 10 urged in the application. The provisions of Section 362 Criminal Procedure Code ("Cr.P.C." for short) bars review of the judgment and order, except to correct a clerical or arithmetical error. In our view, once the application has been decided on merits, this Court cannot sit in Appeal over its own order and more so in view of the provisions of Section 362 Cr.P.C. We are therefore not inclined to recall or cancel the order dated 13th July, 2017.

10. In the case of *Narendra K. Amin* (supra), the Officer of the Anti-Terrorist Squad who was a Senior IPS Officer was found to be involved in encounters. He was granted bail by the trial Court on the ground that persons like him should not be subjected to unnecessary harassment and humiliation when there was a possibility of securing his presence by imposing appropriate conditions. The State of Gujarat filed an application under Section 439(2) Cr.P.C. for cancellation of bail before the Gujarat High Court. The High Court, in view of the facts of the case and seriousness of the offence, cancelled the bail against which the accused had preferred Appeal.

. In the case of *Kanaka Rekha Naik* (supra), the appellant was the wife of the deceased who was killed during the riots in Orissa. The trial Court convicted the local MLA, Manojkumar Pradhan. Against the said conviction, Manojkumar Pradhan had preferred an appeal before the High Court and on the very day of its admission, Manojkumar Pradhan was directed to be released without assigning any reasons. Against the said order, the wife of the deceased had preferred an SLP. The Apex Court, set aside the order of release having found that High Court had not recorded any reasons and having further found that High Court was mainly impressed by the fact that the respondent was a sitting MLA.

. In our view, the facts of the judgments cited have no application to the facts in hand.

11. That for the reasons aforesaid, the Application deserves no consideration. It is accordingly rejected.

(SANDEEP K. SHINDE, J)

(ACTING CHIEF JUSTICE)

Neeta
Shailesh
Sawant

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