

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1546 OF 2018**

Ganesh Prakash Gaikwad

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. G.S. Jadhav for the Applicant.

Mr. Ajay Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 18th DECEMBER, 2018.

P.C.:-

Mr. Patil, the learned APP submitted that, after the Applicant was granted interim relief by this Court by an Order dated 2nd August 2018, the Applicant has further committed a crime bearing C.R.No. 384 of 2018 dated 6th August, 2018 under Sections 143, 147, 148, 149, 307, 323, 324, 504 and 506 of the Indian Penal Code registered with Baramati City Police Station, District Pune (Rural).

2 The learned counsel appearing for the Applicant, on instructions, submitted that in the said crime i.e. C.R. No. 384 of 2018, the learned Additional Sessions Judge, Baramati has already granted pre-arrest bail to the Applicant. He places on record a compilation of documents containing 22 pages, which include the

typed copy of the first information report and the Order passed by the learned Additional Sessions Judge, Baramati dated 3rd October, 2018 granting pre-arrest bail to the Applicant in the said C.R. No.384 of 2018.

3 Thus, it is clear that the Applicant after getting interim relief from this Court, has misused the liberty granted to him. In view thereof, interim relief granted by Order dated 2nd August 2018 is vacated and as a consequence thereof, the present Application is dismissed *in limine*.

4 A perusal of the said Order dated 3rd October, 2018 indicates that the concerned Court i.e. the learned Additional Sessions Judge, Baramati was not apprised of the fact that, the Applicant is also an accused in the present crime i.e. C.R. No. 285 of 2018 registered with the same police station i.e. Baramati City Police Station and has been protected by this Court by way of an interim Order dated 2nd August, 2018.

Thus, it is apparent that, the Applicant by suppressing material facts from the concerned Court has obtained the Order dated 3rd October, 2018. It is the settled position of law that, an Order obtained by suppressing the material facts and/or by misleading the

Court, should not remain in force even for a minute. That, the Court has inherent powers to recall such Order secured by fraud or misrepresentation. Reliance is placed on the decisions of the Hon'ble Supreme Court in the case of *S.P. Chengalvaraya Naidu Vs. Jagannath* reported in 1994(1) SCC Page 1 : A.I.R. 1994 SC Page 853 and *United India Insurance Co. Ltd. vs. Rajendra Singh* reported in 2000 (3) SCC Page 581.

5 In view of the facts recorded here-in-above, the Order dated 3rd October, 2018 needs to be quashed and set aside on the aforestated ground alone.

6 However, as the Applicant has been granted pre-arrest bail, it is necessary that a notice be issued to him as to why the said Order dated 3rd October, 2018 may not be quashed and set aside.

The Registry is directed to issue notice to the Applicant i.e. Ganesh Prakash Gaikwad making it returnable on 15th January, 2019.

The Registry is directed to give a separate number to the said proceedings/notice issued to the Applicant treating it as a *suo-motu* Application for cancellation of bail by this Court.

This be done within a period of two weeks from today.

The Senior Inspector of Police, Baramati City Police Station, is hereby directed to depute a responsible officer to serve the said notice upon the Applicant within the said stipulated period.

(A.S. GADKARI, J.)