

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1990 OF 2018**

Hiralal Vitthal Gajjam

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Priyal Sarda for the Applicant.

Mr. S.R.Agarkar, APP for the State.

Mr. M.S.Bhavikatti, Asst. Police Inspector, Valsange Police Station,
Solapur Rural present.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : SEPTEMBER 27, 2018.

P.C.

1. This is an application for bail under Section 439 Cr.P.C. filed by the aforesaid applicant, who has been arrested in Crime No. 130 of 2017 registered at Valsang Police Station for offences under Section 420, 467, 468, 471, 477(1) of IPC.
2. Heard Mr. Sarda, the learned Counsel for the applicant and Shri Agarkar, the learned APP for the State.
3. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

4. The aforesaid crime was registered pursuant to the first information report lodged by one Ambadas Narsayya Tadkapalli. The first informant had alleged that the applicants had agreed to sell to him plots bearing nos. 43 and 55 from Gat No. 515/2 at Village Kumbhari. They had entered into an agreement and that the first informant had paid to the applicant total amount of Rs.1,80,000/- and Rs.1,30,000/- in respect of each of these plots. The applicant had not executed the sale deed and upon enquiry the first informant learnt that the applicant was not the owner of the plot which he had agreed to sell. The first informant therefore lodged the FIR for cheating.

5. The applicant was arrested on 5th April, 2017. He had filed Bail Application No.353 of 2017 before the learned Addl. Sessions Judge, Solapur. By order dated 24th April, 2017 the learned Addl. Sessions Judge, upon considering the merits of the matter granted bail and directed to release the applicant on furnishing bail bond of Rs.25,000/- with one solvent surety of the like amount. The applicant was also directed to report to the Investigating Officer as and when required and further not to interfere with the first

informant or the witnesses and/or tamper with the evidence in any manner.

6. The records reveal that the first informant had lodged a report dated 31st July, 2017 before Valsang Police Station alleging that the applicant had accosted them on road and threatened to damage the tin shed. Based on the said report NCR No. 0311 of 2017 dated 31st July, 2017 came to be registered before the Valsang Police Station. The first informant thereafter lodged another report on 2nd November, 2017, once again alleging that the applicant had threatened to damage the tin shet. On the basis of the said report NCR No. 451 of 2017 dated 2nd November, 2017 was registered at Valsang Police Station.

7. On 24th June, 2017 Mirabai Sidram Katam, who is one of the witnesses in Crime No. 130 of 2017 had lodged a report that the applicant was annoyed with them for lodging the complaint before the police and that he had assaulted them with kicks and fist blows. NCR No. 264 of 2017 dated 24th June, 2017 was registered at Valsang Police Station on the basis of the said report.

8. Upon registration of these three NCRs, the investigation agency

filed an application before the learned Sessions Court for cancellation of bail granted to this applicant by order dated 24th June, 2017 in Crime No.130 of 2017.

9. It is true that under Section 439(2) Cr.P.C., the High Court and Court of Sessions had the Power to cancel the bail. However, this power has to be exercised judicially and not mechanically. Generally, the grounds of cancellation of bail include interference or attempt to interfere with the due cause of administration of justice, evasion or attempt to evade the due cause of justice or abuse the concession granted to the accused in any manner, possibility of the accused absconding etc.

10. In the instant case, a perusal of the order dated 3rd August, 2018 reveals that the learned Sessions Judge has canceled the bail mainly on the ground of registration of the said 3 NCRs. It is to be noted that the first two NCRs mentioned above were registered on the basis of the report lodged by the first informant and the third NCR was registered on the basis of the report by a witness. Since the alleged offences were non-cognizable, the Investigating Officer had no opportunity of ascertaining or verifying the veracity of the said

allegations. The records reveal that the Investigating Officer had filed the application under Section 439(2) of Cr.P.C. without being satisfied that the applicant had in fact indulged in the alleged activities and thus misused the concession and had violated the conditions of bail. The records also reveal that the applicant herein had given a written application dated 26th June, 2017 to the Police Inspector stating that Mirabai had lodged false reports. He had stated that there was dispute between him and said Mirabai since 2010. The applicant had also alleged that Mirabai had abused and assaulted him. In view of above, it was necessary for the investigating agency to ascertain whether the applicant had in fact misused the liberty or whether NCRs were filed by the first informant and said Mirabai with an object of frustrating and defeating the bail order.

11. As stated earlier, the bail was granted on merits of the matter. The learned Sessions Judge has canceled the bail and jeopardized personal liberty of the applicant without even ascertaining the veracity of the allegations made by the first informant and the witness in the said NCRs. As it has been held by the Apex Court in

Dolat Ram & Ors. vs. State of Haryana (1995) 1SCC 349, that any bail once granted should not be canceled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. In the instant case, apart from the said NCRs, the authenticity of which was not ascertained, there were no such circumstances to lead to the conclusion that the applicant was likely to tamper with the prosecution witnesses, misuse bail and impede the course of justice. Hence, the order cannot be sustained.

12. Under the circumstances, the impugned order is set aside. The applicant shall be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two solvent sureties in the like amount;

. The applicant shall abide by all other terms of order dated 24th April, 2017 in Bail Application No. 353 of 2017.

**Prasanna
Pradeep
Salgaonkar**

Digitally signed by
Prasanna Pradeep
Salgaonkar
Date: 2018.10.12
15:00:11 +0530

(ANUJA PRABHUDESSAI, J.)