

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

CRIMINAL WRIT PETITION NO.5539 OF 2018

Prakash Jayantilal Mehta

... Petitioner

Vs.

State of Maharashtra

... Respondent

Mr.Niranjan Mundargi i/b Aditya Mithe with Mr.Dipesh Siroya for
the Petitioner

Mr.Yogesh Y. Dabke,APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: DECEMBER 7, 2018

P.C.:

1. Upon urgent mentioning, taken on Production board.
2. The petition is directed against the order dated 28.11.2018 passed below the application dated 28.11.2018. The petitioner is facing prosecution under sections 420, 406, 120B of the Indian Penal Code in relation to C.R. No.73 of 2018 of Malabar Hill police station. The petitioner was arrested on 14.11.2018 and thereafter, he was granted bail on 21.11.2018 in the sum of Rs.30,000/- with one surety in the like amount, which was to be furnished within 7 days and the time for furnishing surety was to get over on

28.11.2018. However, temporarily, he was allowed to furnish cash bail. So, he availed of the cash bail on 21.11.2018 and he came out of prison. However, he was arrested on 27.11.2018 in another C.R. No.62 of 2018 registered by the Economic Offences Wing. When he was in custody of the Economic Offences Wing, the petitioner moved an application on 28.11.2018 seeking time of 45 days to file the solvent surety or to allow him to furnish two sureties. He also mentioned that he is unable to attend the Court because he was in the custody of Economic Offences Wing.

3. The learned Judge while rejecting the said application forfeited the cash bail amount and issued arrest warrant against the accused. The learned Magistrate has observed that sufficient time was given to comply with surety and the learned Judge has observed that the accused appears to be involved in serious matters and the accused "don't"hesitate in fleeing the country at first available opportunity. It is also held by the learned Judge that the son of the accused is the co-accused and chances of the present accused to abscond cannot be ruled out.

4. The learned Counsel for the petitioner/accused has submitted no notice was given to the petitioner regarding

cancellation of bail. He submits that the said order needs to be set aside and he be given time to furnish surety.

5. Learned Prosecutor submits to the orders of the Court.

6. Heard the submissions of the learned Counsel. The order passed by the learned Judge is bad and illegal. While cancelling the bail, the learned Judge has to consider the parameters which are different than refusal of bail and an audience is required to be given to the accused on the point of cancellation of bail. Secondly, no person can produce solvent surety within 7 days as the solvency certificate is issued by the Tehsildar from the Revenue Office. It takes at least 1½ months and, therefore, when the applicant has mentioned that he is in custody, there was no need to issue warrant and cancel his bail. Hence, the order of the learned Judge requires interference.

7. Thus, the order dated 28.11.2018 is hereby quashed and set aside. The petitioner/accused is directed to furnish solvent surety on or before 22.1.2019 before the trial Court. The petitioner shall not leave India without the permission of the Court. I am informed that the passport of the petitioner is surrendered before the

Prothonotary and Senior Master of this Court and so, it is not to be returned without any order of this Court.

8. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)