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

**CRIMINAL APPLICTION NO. 687 OF 2019
IN
CRIMINAL APPLICATION NO. 102 OF 2019**

The State of Maharashtra
Vs
Santosh Parvati Gaikwad

..Applicant.
..Respondent

Ms. P.P. Shinde, APP for the Applicant-State.
Mr. Sachin S. Thombre for the Respondent.

**CORAM : A.S.GADKARI And
NITIN W. SAMBRE, JJ.**
DATE : 25th June 2019.

P.C.:

1] This is an application for recalling of Order dated 31st January 2019 passed by the Division Bench of this Court of which one of us (Shri A.S. Gadkari, J.) was a Member. By the said Order dated 31st January 2019, the respondent/ original accused No.2 was granted bail.

2] The State has preferred the present application for recalling the said Order dated 31.1.2019 on the ground that, the respondent herein had earlier preferred an application bearing No.735 of 2017 for bail which was rejected by the Co-Ordinate Bench by its Order dated 26th July 2017. That

while filing the Criminal Application No.102 of 2019, the said fact was not pointed out to this Court and by suppressing the said fact, Order dated 31.1.2019 has been procured.

3] We have perused the entire record and we find substance in the contentions of the prosecution that, earlier application bearing No.735 of 2017 preferred by the respondent herein had been rejected by the Co-Ordinate Bench of this Court by a speaking Order dated 26.7.2017. While hearing of Application No.102 of 2019 and passing the Order dated 31.1.2019, this fact was not pointed out by the respondent and by suppressing the said fact, Order dated 31.1.2019 has been procured.

4] It is the settled position of law that, a Judgment, Decree or an Order obtained by fraud or by non-disclosure of material facts, amounts to fraud on the Court and is liable to be set aside. A safe reliance can be placed on the decision of the Honourable Supreme Court in the case of S.P. Chengalvaraya Naidu Vs. Jagannath, reported in (1994) 1 SCC 1 : AIR 1994 SC 853.

In view thereof, we hereby recall the Order dated 31st January 2019. Application is allowed in terms of prayer clause (a).

5] It is submitted that, though the respondent has been granted bail by Order dated 31st January 2019, he is still not released from jail. In view thereof, there is no question of directing the respondent to surrender to jail custody.

6] In view of the above, Criminal Application No.102 of 2019 is also dismissed.

(NITIN W. SAMBRE)

(A.S.GADKARI, J.)