

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

CRIMINAL APPLICATION No. 517 OF 2019

Gautam Janardan Kaskar & Anr. ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondent

**WITH
CRIMINAL (INTERVENTION) APPLICATION No. 710 OF 2019
IN**

CRIMINAL APPLICATION No. 517 OF 2019

Mr.Vishnu Ramji Kadam ...Applicant

IN THE MATTER BETWEEN

Gautam Janardan Kaskar & Anr. ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr.M.P.Mishra for the Applicants.

Mr.Suryakant J.Lavte for the Applicant/Intervenor in APP No. 710 of 2019.

Mr.A.R.Patil, APP for Respondent No.1-State.

Mr.Bharat Patil, API, Versova Police Station, Mumbai.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 26 APRIL 2019

P.C.:

1. This Criminal Application is directed against the order dated 4th April, 2019 passed by the learned Additional Sessions Judge, Borivali

Division, Dindoshi, in Misc. Application No. 113 of 2018 in Anticipatory Bail Application No. 496 of 2018, thereby cancelling the order of anticipatory bail granted to the applicants/accused.

2. The applicants/accused are facing prosecution under sections 452 and 427 of the Indian Penal Code. The offence was registered on 13th April, 2018. As per the complaint, the incident had occurred on 12th April, 2018. Thereafter, the applicants/accused approached the Sessions Court on 21st April, 2018. The learned Sessions Judge granted anticipatory bail with specific condition that the applicants/accused shall co-operate the Investigating Officer in drawing panchnama.

3. Thereafter, on 9th May, 2018, the Investigating Officer along with the Panch went to the spot. At that time, the applicants/accused obstructed the Investigating Officer and did not allow him to draw spot panchnama. Thereafter, an application was moved before the Sessions Court for cancellation of anticipatory bail and the learned Sessions Judge by an order dated 4th April, 2019 cancelled the anticipatory bail and directed the applicants/accused to surrender before the Investigating Officer on or before 11th April, 2019.

4. The learned Counsel for the applicants/accused submits that the applicants/accused are in possession of the premises and respondent No.2 i.e., original complainant in the present matter had filed S.C.Suit No. 1268 of 2018 for injunction and in the said suit, the Notice of Motion was taken out by the original complainant. By an order dated 2nd May, 2018, the learned Ad-hoc Judge, City Civil Court, Borivali Div. Dindoshi, Mumbai refused the ad-interim relief. He further submits that as the ad-interim relief was refused, the steps were taken out for drawing panchnama with ulterior motive. He further submits that on 9th May, 2018, the applicants/accused did not obstruct the Investigating Officer from drawing spot panchnama, but the applicants/accused gave complaint to the Sr. Police Inspector, Versova Police Station on the same day i.e., 9th May, 2018 in same C.R. i.e., C.R. No. 152 of 2018 and reported that the police were callous and acted in favour of the original complainant. He further submits that there were no obstruction from the applicants/accused on 9th May, 2018. He further submits that in fact panchnama was drawn pursuant to the order passed by the Sessions Court and, therefore, he prays that the order of cancelling the order of anticipatory bail is illegal and to be set aside.

5. The learned Public Prosecutor submits that the learned Sessions Judge has passed detailed order after seeing CCTV footage and the DVD, which were produced before the learned Sessions Judge and whatever captured in CCTV footage has been elaborately described by the learned Sessions Judge while cancelling the order of anticipatory bail. He points out that the offence had taken place on 12th April, 2018. He further submits that the first incident of obstruction took place on 13th April, 2018 and the second incident of obstruction took place on 9th May, 2018, and because of the first incident, the learned Sessions Judge had put specific condition in the order of granting anticipatory bail.

6. The learned Counsel for the intervenor adopts the submissions made by the learned Public Prosecutor and supports the order passed by the learned Sessions Judge.

7. At this stage, the finding given by the Civil Court cannot be given any weightage because the order was passed on 2nd May, 2018 and the Sessions Court passed order of granting anticipatory bail on 21st April, 2018 with specific condition, which is violated on 9th May,

2018. The Court is generally very slow in cancelling the order of granting anticipatory bail or bail, as it curtails the liberty of a person. In the present case, after going through the order of granting anticipatory bail on 21st April, 2018, it is found that the learned Sessions Judge in sub-clause (c) of the order has specifically stated as follows:

“(c). The applicants are directed to co-operate with the Investigating Machinery for carrying out spot panchnama with strict direction that they should not cause any hurdle in the process of investigation. They shall not destroy the evidence”.

8. Such condition would not have been mentioned unless there was some specific reason. In the impugned order, the learned Sessions Judge has given details in respect of obstruction, which took place on 9th May, 2018 and the learned Sessions Judge has given further reasons in paragraph Nos. 37 and 38 of the impugned order. Certainly, it was not a job of the applicants/accused to question the Investigating Officer about panchnama and the procedure followed by him while drawing spot panchnama. The complaint given by the applicants/accused to Sr. Police Inspector, Versova Police Station on the same day i.e., 9th May, 2018 in C.R. No. 152 of 2018 in fact shows that on 9th May, 2018, the

Investigating Officer had visited the spot to draw panchnama. The applicants/accused should not have obstructed the Investigating Officer to draw panchnama and when especially the learned Sessions Judge accordingly put specific condition while granting pre-arrest bail. It is not the question of cancelling the order of anticipatory bail, but it is more respecting the orders passed by the Court. The order passed by the Civil Court in suit for injunction against the complainant i.e., respondent No.2 has no bearing over the order of cancelling the anticipatory bail. Hence, I am of the view that the order dated 4th April, 2019 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi is correct and legal. The applicants/accused are directed to surrender before the Investigating Officer on 3rd June, 2019 at 9.00 a.m. and to be produced before the learned Magistrate on the same day and may apply for regular bail on the same day before the learned Magistrate and the learned Magistrate to decide the said application on the same day, if made so.

9. The learned Counsel for the applicants/accused wants to challenge this order before the Supreme Court and hence, he prays to stay the operation of this order for a period of one month.

10. As the applicants/accused want to challenge this order before the Hon'ble Supreme Court, the operation of this order is stayed till 30th May, 2019.

11. In view of above, Criminal Application is dismissed.

12. In view of dismissal of the Criminal Application, Criminal (Intervention) Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)