

Anand

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

CRIMINAL APPLICATION NO. 805 OF 2018

(For cancellation of bail)

IN

CRIMINAL APPEAL NO. 102 OF 2016

The State of Maharashtra

.Applicant

Vs.

Santosh Gitaram Raskar

.Respondent

Mrs. P. P. Shinde, APP, for the Applicant – State

Mr. A. U. Nikam, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 12.03.2019

P.C.

. Heard learned counsel for the parties.

2. A few facts as are necessary to decide the aforesaid Application are as under :-

3. The Respondent – Santosh Raskar and other co-accused were convicted for the offence punishable under Section 394 r/w 34 of the Indian Penal Code and were sentenced to suffer R. I. for seven years and to pay a fine of Rs. 1000/- each,

in default to suffer R. I. for one month. They were also convicted for the offence punishable under Section 341 r/w 34 of the Indian Penal Code and accordingly, were sentenced to suffer imprisonment for one month and to pay fine of Rs. 500/- each, in default to suffer imprisonment for 15 days. Being aggrieved by the said Judgment and order of conviction and sentence dated 22.01.2016 passed by the learned Additional Sessions Judge, Pune in S. C. No. 798 of 2009, the Respondent – Santosh alongwith other co-accused preferred an Appeal in this Court, being Cri. Appeal No. 102 of 2016. The said Appeal was admitted by this Court and vide order dated 28.04.2016, the Respondent - Santosh alongwith other co-accused were enlarged on bail subject to certain conditions. The conditions imposed by this Court vide order dated 28.04.2016 while suspending the sentence of the Respondent – Santosh and other co-accused are reproduced herein under :-

“O R D E R

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicants is hereby suspended and they be enlarged on bail on furnishing P. R. in the sum of Rs. 25,000/- each and one or more

sureties in the like amount.

(iii) **Applicants shall report to Court of Sessions, Pune once in three months, on the date as specified by the Sessions Judge, till the conclusion of the appeal.**

(iv) **Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.**

6) Application stands disposed of in the above terms.”

4. As per Clause (iii) of the said order, the Respondent and other co-accused were directed to report to Court of Sessions, Pune once in three months, on the date specified by the Sessions Judge, till the conclusion of the appeal. It is not in dispute that the other co-accused are complying with the said condition as on date. However, as the Respondent herein failed to comply with Clause (iii) of the said order, the prosecution i. e. the Applicant - State filed an Application seeking cancellation of the Respondent's bail pursuant to the liberty granted by this Court vide Clause (iv). On 30.01.2019, this Court (Coram : Smt. Sadhana S. Jadhav, J.) issued a non-bailable warrant through the Loni Kalbhor Police Station and directed them to produce the Respondent – Santosh

before this Court within three days from the date of execution of the non-bailable warrant. Accordingly, the police of the Loni Kalbhor Police Station, produced the Respondent – Santosh before this Court yesterday. Since the aforesaid Application was not on board, the aforesaid Application was directed to be listed today and the learned APP was requested to inform the Advocate on record appearing for the Respondent. Accordingly, Mr. Nikam, Advocate for the Respondent – Accused is present in Court today. The Loni Kalbhor Police Station has also produced the Respondent today. Mr. Nikam states that the Respondent is tendering his unconditional apology for not appearing before the Court as directed by this Court. He, however, assures that the Respondent hereinafter will comply with the order dated 28.04.2016 in particular Clause (iii) of the said order. The Respondent is present in person. He too assures that he will comply with the order dated 28.04.2016 and that he will appear before the Sessions Court, Pune as directed vide order dated 28.04.2016. He is also ready to file an Affidavit stating that he will comply with the said order.

5. Learned APP submits that the Respondent's bail be cancelled, as he has failed to comply with the order dated

28.04.2016.

6. Perused the papers. Having regard to the particular facts and in particular, the statement made by the Respondent who is present in Court and having regard to the submissions advanced by the learned counsel for the Respondent, I do not deem it fit to cancel the Respondent's bail. Accordingly, the Application is rejected. However, since the Respondent is arrested and produced pursuant to the non-bailable warrant issued by this Court, the Respondent is directed to be released on bail on the following terms & conditions :-

O R D E R

- (i) The Respondent be released on the same P. R. Bonds as were furnished earlier by the Respondent in compliance with the order dated 28.04.2016;
- (ii) Respondent will comply with the order dated 28.04.2016 inasmuch as the Respondent shall report to the Court of Sessions, Pune once in three months on the date as specified by the learned Sessions Judge till conclusion of the appeal;
- (iii) Upon failure to attend any two consecutive dates, prosecution would be at liberty to seek cancellation of bail.

In addition to the aforesaid conditions imposed by this Court vide order dated 28.04.2016, having regard to the fact that the Respondent had failed to comply with the order dated 28.04.2016, the Respondent to file an undertaking in the Sessions Court within two weeks from today stating that he will comply with the order dated 28.04.2016. The Applicant shall also furnish his current residential address and mobile number to the Sessions Court in the said undertaking and shall undertake to keep the Sessions Court informed about change in address, mobile number, if any.

7. The Application is, accordingly, disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)