

nsc.

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

CRIMINAL WRIT PETITION NO.3575 OF 2019

Henry Nikolas Fernandes

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Mr.Subhash Jha a/w Ms.Sanjana Pardeshi i/b Law Global Advocates, for
the Petitioner.

Mr.A.R.Kapadnis, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JULY, 2019

P.C. :

1. Heard learned counsel for the parties.
2. The aforesaid writ petition has been placed before this Court,
as the challenge is to the order cancelling the petitioner's bail, in view of the
assignment of this Court.
3. By this petition, the petitioner has impugned the order dated
15th October, 2018 passed by the learned III Judicial Magistrate First Class,

(II Court), Thane, by which the petitioner's bail was cancelled as well as order dated 4th July, 2019, passed by the learned Additional Sessions Judge, Thane, in Criminal Revision Application No.209 of 2018, which confirmed the order of the trial Court cancelling petitioner's bail.

4. Learned Counsel for the Petitioner submitted that the bail granted to the petitioner by the learned Judicial Magistrate First Class, II Court, Thane, vide order dated 25th April, 2018, could not have been cancelled by the learned Magistrate on an application filed by the complainant. He submitted that even the learned Additional Sessions Judge, Thane, had erred in partly allowing the Revision Application, inasmuch as, the Sessions Court confirmed the order of the trial Court, and directed the petitioner herein to surrender before the trial Court within 15 days and granted liberty to the petitioner to file a fresh bail application, which was to be decided on its own merits. According to the learned counsel, there was no reason/rationale for the trial Court and the learned Additional Sessions Judge, to cancel the petitioner's bail, inasmuch as, the petitioner was not party to the Consent Terms, which were entered into, between co-accused - Paromita Vijjan Chakravarty and the complainant.

He submitted that in these circumstances, cancellation of the petitioner's bail was unwarranted.

5. Learned APP opposed the petition. He submitted that the order granting bail clearly shows that it was not on merits but only in view of the Consent Terms entered into between co-accused - Paromita Vijjan Chakravarty and the complainant. He submitted that the order dated 25th April, 2018 granting bail to the petitioner was not challenged by the petitioner, though it was a conditional order passed in view of the Consent Terms entered into between Paromita Vijjan Chakravarty and the complainant. He submitted that even in the Bond executed by the petitioner, the said condition must have been incorporated. He submitted that no interference is warranted in either of the orders i.e. order of the learned III Judicial Magistrate First Class and of the learned Additional Sessions Judge, in writ jurisdiction.

6. Perused the papers. The petitioner along with the other co-accused was arrested in connection with C.R.No.I-80 of 2018, registered with the Vartak Nagar Police Station, Thane, (now investigated by Anti-

Extortion Cell, Crime Branch, Thane), for the alleged offences punishable under Sections 406, 420, 465, 467, 468, 471, 504, 506 r/w Section 120B of the Indian Penal Code. It is not in dispute that pursuant to the registration of the aforesaid offences, all the accused including the petitioner was arrested. It appears that whilst in custody, Consent Terms were entered into between Paromita Vijjan Chakravarty and the complainant. The said Consent Terms are on page 25 of the Petition. In view of the Consent Terms entered into between Paromita Vijjan Chakravarty and the complainant, Paromita Chakravarty was to make the necessary payment to the complainant and accordingly, the complainant – Suresh was to give his no objection to the bail application. In the said Consent Terms it is stated by the complainant that Paromita Chakravarty and her associates had promised to give him a loan of Rs.30 crores at simple interest @10% per annum and asked the complainant to deposit Rs.3 crores as security, to show his bonafides, which was deposited. Co-accused - Paromita Chakravarty in the Consent Terms, agreed to return Rs.4,92,47,371/- to the complainant in installments and the schedule was set out in the Consent Terms. It is also stated in the Consent Terms that the Consent Terms shall be taken as a part of conditional bail. In view of the Consent Terms entered

into between Paromita Vijjan Chakravarty and the complainant on 25th April, 2018, all the accused including the petitioner were enlarged on bail. The order granting bail to the petitioner and the other co-accused reads thus:-

“This is an application U/s. 437 of Cr.p.c. The offence against the accused are U/s. 420, 120(B), 465, 467, 468, 471, 406, 504 and 506 of I.P.C. The complainant Suresh Nathalal Dodiya is present. He has filed his no objection to grant bail to accused. Accused and complainant have filed consent terms. It is signed by the complainant, as well as, accused and their advocates. The only request made by the complainant that conditional bail order be granted that in case the accused fail to comply the consent terms, their bail shall stand cancelled. In view of the consent terms in between the parties which is mitigating circumstances to consider the bail. I am of the opinion that bail may be granted to accused on condition. Hence, following order.

ORDER

1. The bail is granted to accused – Parumita Chakrovarti, Henry Fernandes and Sneha @Anita Sudhir Vedpathak/Deshpande on their executing P.B. and S.B. of Rs.15,000/- each on condition that they shall comply the consent terms within prescribed time as per consent terms, failure to which their bail will stand cancelled automatically without notice to them.

2. Accused have prayed for cash bail for 7 days to which complainant orally submitted his no objection. Hence, cash bail of Rs.15,000/- each is allowed for 7 days.”

(emphasis supplied)

7. As there was non-compliance of the Consent Terms, the

complainant filed an application seeking cancellation of bail and forfeiture of the bail bonds of all the accused, including the petitioner. The said application was allowed by the learned III Judicial Magistrate First Class, (II Court), Thane, vide order dated 15th October, 2018. The operative part of the said order reads thus:-

- “1. Application for cancellation of bail is hereby allowed.
2. Accused No.1 – Pormita, accused No.2 – Henry and accused No.3 – Sneha Deshpande, are directed to furnish fresh bail application.
3. Bail bonds of accused No.1 – Pormita, accused No.2 – Henry and accused No.3 – Sneha Deshpande have been cancelled.
4. Issue Non-bailable Warrant against the accused.”

8. The petitioner alongwith other 2 co-accused being aggrieved by the said order cancelling their bail, filed a Revision Application before the learned Additional Sessions Judge, Thane. It was a common application. The learned Additional Sessions Judge after hearing the parties was pleased to allow the Revision Application partly vide order dated 4th July, 2019. The operative part of the said order reads thus:-

- “1. The Revision Application is hereby partly allowed.
2. The accused persons are directed to appear before the Ld. Trial Court and surrender themselves within 15 day from the date of order

and are at liberty to file fresh bail application.

3. It is expected from Ld. Trial Court to decide the bail application on merits.

4. Ld. Trial Court be informed accordingly.”

9. It is clearly evident that the order granting bail to the petitioner and the other co-accused was a conditional order on the basis of the Consent Terms entered into between Paromita Vijjan Chakravarty and the complainant, and was not on merits. As there was breach of the Consent Terms, the bail of the petitioner and the other co-accused was cancelled. It is pertinent to note, that the petitioner never objected to the conditional bail, granted by the learned Magistrate vide order dated 25th April, 2018 and infact executed P.B. and S.B. of Rs.15,000/-, that the Consent Terms will be complied with.

10. There is no infirmity warranting interference in writ jurisdiction. The learned Additional Sessions Judge has rightly directed the petitioner and the other co-accused to appear before the trial Court and surrender themselves within 15 days from the date of order with liberty to

file fresh bail application. The trial Court was also directed to decide the bail application on merits.

11. Accordingly, the order dated 15th October, 2018 passed by the learned III Judicial Magistrate First Class, (II Court), Thane, as well as order dated 4th July, 2019, passed by the learned Additional Sessions Judge, Thane, in Criminal Revision Application No.209 of 2018, are confirmed. If an application for Regular Bail is filed by the petitioner, after his surrender, the learned trial Court shall decide the same, as expeditiously as possible and preferably within two weeks from the date of filing of the application.

12. Petition is accordingly dismissed on aforesaid terms.

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

REVATI MOHITE DERE, J.