

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 254 OF 2019**

Mukesh Permanand Ajmera	...Applicant
Versus	
1. Naresh C. Barot	
2. Shailesh Mistry	
3. The State of Mahatrashttra	...Respondents

Mr. A. P. Singh I/b S. K. Srivastav & Co. for the Applicant

Mr. Diwakar Singh for the Respondent Nos. 1 & 2

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No.3-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 10th OCTOBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks cancellation of the anticipatory bail granted by this Court (Coram : Prakash D. Naik, J.) vide order dated 7th December 2018 to respondent Nos. 1 and 2 in Anticipatory Bail Application No. 1843 of 2018, on the ground that the respondent Nos. 1 and 2 have breached the Consent Terms entered into between the applicant and the respondent Nos. 1 and 2. The said order dated 7th December 2018 reads as under :

“1. This is an application for anticipatory bail in C.R. No. 168 of 2018 registered with Vile Parle Police Station for the offence punishable under Sections 406, 420 read with 34 of Indian Penal Code alongwith Sections 4 and 13 of the MOFA.

2. Learned counsel for the intervenor/complainant submitted that the parties have resolved the dispute amicably. The affidavit-cum-declaration executed by the applicant is tendered. During the course of hearing of this application, the parties have also executed consent terms. The complainant is present in the Court and he is being identified by the advocate representing him. The affidavit executed by the applicant and the consent terms signed by both the parties are taken on record and marked “X” for identification. It is submitted by the learned advocate for the complainant that in view of the consent terms, anticipatory bail can be granted to the applicant. In consent terms, it has been stated that in the event of breach of the consent terms, the anticipatory bail granted to the applicant can be cancelled and the Respondent No.2 will be at liberty to apply for cancellation of anticipatory bail. In view of above, I pass the following order.

ORDER

- i) Anticipatory Bail Application No. 1843 of 2018 is allowed;*
- ii) In the event of arrest of applicant in connection with C.R. No.168 of 2018 registered with Vile Parle Police Station, the applicant be released on bail on furnishing P.R. Bond of Rs.25,000/ with one or more sureties in the like amount.*
- iii) In the event of breach of consent terms by the applicant, the Respondent No.2 or the prosecution will be at liberty to prefer an application for cancellation of anticipatory bail.*
- iv) Anticipatory Bail Application stands disposed off.”*

3 It is clear from the said order that the respondent Nos. 1 and 2 were granted pre-arrest bail not on merits but only in view of the Consent Terms entered into between the parties. The Consent Terms entered into between the parties are at page 168 of the application. The relevant clauses of the said Consent Terms dated 7th December 2018, read as under :

“3. The Applicants do hereby confirm to pay to the Respondent No.2 the full and final amount as per the Award dated 03/08/2015 passed by the Ld. Arbitrator Shri Sham Kapadia. The Applicants do hereby undertake to pay to the Respondent No. 2 the amount of Rs. 1,40,00,000/- (Rupees One Crore Forty Lakhs only) which is the principal amount along with applicable rate of interest i.e. 15% per annum, as per the Award dated 03/08/2015. (Interest amount will be Rs. 1,68,00,000/- till the payout i.e. six months from today). So Total amount payable which is rounded off to Rs. 3,25,00,000/- (Rupees three Crore twenty five lacs only).

4. It is agreed that, upon realization of the entire amount of Rs. 3,25,00,000/- the Respondent No.2 shall consent for compounding of offence as registered against the Applicants i.e. CR No. 168/2018 filed before Vile Parle (East) Police Station;

5. It is agreed that the Applicants do hereby undertake that, they shall comply with the above mentioned terms of payment on or before 180 days, I.e. on or before 06.06.2019 without any excuse failing which the above Anticipatory Bail granted to the Applicants by the Hon’ble Court shall be cancelled and the Respondent No.2 shall be at liberty to apply for cancellation of Bail before this Hon’ble Court and further to proceed with the Complaint bearing No. 1858 of 2017 before the 65th Court of Metropolitan Magistrate at Andheri;

6. It is agreed between the parties that, the Applicants shall file their appearances before the Hon’ble High Court in

Execution Application No. 783 of 2016 by themselves or through their Advocates within 7 days on signing of these Consent Terms;

7. It is agreed between the parties that, the Applicants shall file Affidavit of disclosure of their assets in Execution Application No. 783 of 2016 before the Hon'ble High Court within a period of 2 weeks on signing of these Consent Terms."

4 Admittedly, the respondent Nos. 1 and 2 have breached the said Consent Terms. Out of the amount of Rs. 3,25,00,000/- (Rupees Three Crores Twenty-five Lakhs), the respondent Nos. 1 and 2 have paid the applicant only a sum of Rs. 10,00,000/- (Rupees Ten Lakhs), that too, on 14th August 2019. Sufficient time was granted to the respondent Nos. 1 and 2, even after this application was filed, however, till date, the Consent Terms have not been honoured. The amount was to be paid by the respondent Nos. 1 and 2 to the applicant by 6th June 2019. The order granting pre-arrest bail to the respondent Nos. 1 and 2 is very clear i.e. it gives liberty to the applicant herein or the prosecution to prefer an application for cancellation of anticipatory bail, in the event, there is breach of the Consent Terms.

5 As noted above, admittedly, there is breach of the Consent Terms. Learned A.P.P states that apart from the aforesaid case, there are five cases registered as against the applicant, which are similar in nature.

6 Be that as it may, as there is clear breach of the Consent Terms, in view of the order dated 7th December 2018, the application is allowed and the anticipatory bail granted to the respondent Nos. 1 and 2 vide order dated 7th December 2018, stands cancelled.

7 At this stage, learned counsel for the respondent Nos. 1 and 2 seeks time to surrender. The said prayer is rejected.

8 Application is accordingly disposed of.

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

REVATI MOHITE DERE, J.