

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 381 OF 2018**

MOSIKUDDIN S/O. SAGIRUDDIN
KAZI

.....APPLICANT

Vs.

THE STATE OF MAHARASHTRA
& ANR.

.....RESPONDENTS

Mr. S.B. Khan for the Applicant.

Mr. Ajay Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 12th APRIL, 2019.

P.C.:-

This is an Application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure read with Article 227 of the Constitution of India.

2 The Applicant being the victim has impugned Orders dated 5th October, 2017 passed by the learned Additional Sessions Judge, Greater Mumbai, granting pre-arrest bail to the Respondent No.2 in an offence bearing C.R. No. 234 of 2017 registered with Nirmal Nagar Police Station, Mumbai under Sections 324, 326, 143, 144, 147, 148 and 149 of the Indian Penal Code and Order dated 7th December,

2017 passed in Miscellaneous Application No. 687 of 2017 thereby, rejecting the said Application, seeking cancellation of bail granted to the Respondent No.2.

3 Heard the learned counsel for the Applicant and the learned APP. Perused the record.

4 The learned counsel for the Applicant submitted that, the Respondent No.2 was granted pre-arrest bail in an offence wherein initially Section 326 of the Indian Penal Code was applied and after conclusion of the investigation, the police have now applied Section 307 of the I.P.C. He further submitted that, after grant of pre-arrest bail to Respondent No.2, the Respondent No.2 is continuously threatening the Applicant and various N.C. Complaints in that behalf have been lodged.

 He submitted that, in view of these facts, the Trial Court ought to have allowed Miscellaneous Application No. 687 of 2017 thereby, cancelling the pre-arrest bail of the Respondent No.2. He therefore, prayed that, the present Application may be allowed by quashing and setting aside Orders, dated 5th October 2017 and 7th December, 2017.

5 A bare perusal of Order dated 5th October, 2017 would indicate that, in para No.7 of the said Order, the Trial Court has already considered the aspect of the application of Sections 307 and 120(B) of the I.P.C. to the present Crime and therefore, the contention of the learned counsel for the Applicant that after conclusion of investigation police have now added Section 307 of the Indian Penal Code is of no avail to him.

The record clearly indicates that, while passing the impugned Order dated 5th October, 2017, the Trial Court has taken into consideration, the various attending circumstances and factors relevant for deciding the pre-arrest bail application and has allowed the pre-arrest bail Application of the Respondent No.2.

6 It further appears from the record that, while rejecting the Miscellaneous Application No. 687 of 2017 preferred by the Applicant for cancellation of pre-arrest bail, granted to Respondent No.2 the Trial Court by its Order dated 7th December 2017 has in detailed considered the various aspects of the case and has passed a well reasoned Order.

7 After perusing the record, this Court finds no error either in law or on facts in both the impugned Orders dated 5th October,

2017 and 7th December 2017.

The Application being devoid of any merits and is accordingly rejected.

(A.S. GADKARI, J.)