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

**CRIMINAL APPLICATION NO. 548 OF 2016
WITH
APPP NO. 732 OF 2019**

Ramesh Madan Patel

..Applicant.

Vs

Mahul @ Sandashiv D. Pandey & Ors.

..Respondents

Mr. G.K. Jadhav for the Applicant.

Ms. Rutuja Ambekar, APP for State.

Mr. Prashant Pandey for respondent Nos.1 to 4.

CORAM : A.S.GADKARI, J.

DATE : 30th April 2019.

P.C.:

1] This is an application under section 439(2) of Cr. P.C. for cancellation of pre-arrest bail granted to the respondent Nos.1 to 4 by the learned Additional Sessions Judge, Greater Mumbai by its Order dated 18th August 2016 in A.B.A No. 598 of 2016.

2] Heard Mr. G.K. Jadhav, the learned counsel for the applicant, Mr. Prashant Pandey, the learned counsel for the respondent Nos.1 to 4 at

length and the learned APP for the State. Perused the written reply dated April 2019 of the respondents and affidavit dated 30th April 2019 filed by Mr. Prakash T. Sutar, Investigating Officer of the present crime.

3] The respondent Nos.1 to 4 are accused in CR No.112 of 2016 dated 25.3.2016 registered with Azad Maidan Police Station, Mumbai under sections 420, 467, 468, 471 read with 34 of the Indian Penal Code.

(Hereinafter the respondent Nos.1 to 4 are referred to as “the respondents” for the sake of brevity).

The first information report is lodged by the applicant herein. The prosecution case in nutshell is that, the respondents submitted forged and fabricated letters dated 10.1.2013 and 15.10.2013 of the informant in Summary Suit No.520 of 2014 and Summary Suit (L) No.354 of 2014 before this Court. The respondents submitted the said letters before this Court and by misrepresenting the Court, have obtained favourable Order dated 1.7.2014 in the said suits. After lodgment of the first information report, the respondents filed Anticipatory Bail Application No.598 of 2016 in the Court of Sessions, Greater Mumbai. The learned Additional Sessions Judge, by the impugned Order dated 18th August 2016 was pleased to allow the said application and granted pre-arrest bail to the respondents on

certain terms and conditions. Amongst other conditions, the condition Nos.3 and 4 reads as under:-

“(3) The applicants shall co-operate with the Investigating Officer and shall appear before him as and when directed.

(4) The applicants shall produce their specimen signatures if needed for the purpose of investigation.”

4] The learned counsel for the applicant submitted that, apart from challenge to the impugned Order on merits, the applicant is also seeking cancellation of bail on the ground of non-compliance of the aforesaid two conditions imposed by the impugned Order dated 18th August 2016. He submitted that, the respondents have failed to comply with the said two conditions and therefore the pre-arrest bail granted to the respondents may be cancelled on that ground also.

5] Mr. Pandey, the learned counsel for the respondents submitted that, from the date of registration of the first information report till date, the respondents have co-operated with the Investigating Officer by presenting themselves before the Investigating Officer as and when called with all necessary documentary evidence. He submitted that, as and when the hearing of the present application was scheduled, the Investigating

Officer used to call the respondents, however, refused to give acknowledgement of attendance, as the impugned Order dated 18th August 2016 does not mandate attendance. He submitted that, the State of Maharashtra has not filed any application for cancellation of anticipatory bail for breach of any of the conditions since passing of the impugned Order dated 18th August 2016. He raised an objection that, the present application filed by the informant, who has no locus standi, is not maintainable.

Mr. Pandey, the learned counsel for the respondents submitted that, today he has filed Criminal Application No.737 of 2019 with a prayer that, the respondents be allowed to file written statements and compilation of documents. On the basis of a praeceipe dated 30.4.2019 submitted by the learned counsel for the respondents, the said application was called for before this Court. In the said application, the respondents in prayer clause (a) have prayed that, the Hon'ble Court be pleased to allow the applicants i.e. respondents herein to file written statements and compilation.

6] The record clearly indicates that, the present application after service of notice to the respondents was earlier taken up for hearing on 12.4.2019 when the learned counsel for the respondents, with a view to enable him to file reply to the present application, had sought adjournment

and the present application was thereafter posted for hearing on 26.4.2019. That, on 26.4.2019 Mr. Pandey, the learned counsel for the respondents appeared and sought time to take instructions in the matter. In view thereof, the present application was kept for hearing today 'first on board', with a clear understanding that, the present application will be heard finally today, as it is of the year 2016.

7] The respondents were expected to file their reply to the application in pursuance of Order dated 12.4.2019 and not an application seeking permission to file written statement and other documents. Even otherwise such permission from the Court is not necessary for filing reply to the application. Filing of the said application No.737 of 2019 clearly indicates that, the respondents with a view to dodge and procrastinate the hearing of the present application has filed it. The practice adopted by the respondents through their Advocate is hereby deprecated.

Mr. Pandey thereafter tendered across the bar a copy of the reply of the respondents dated – April 2019, duly signed by the Advocate for the respondents along with compilation of the documents annexed thereto. The same is taken on record.

8] In reply it is contended by the respondents that, the respondents

have attended the concerned Police Station on 24.2.2017, 23.3.2017, 11.12.2017, 14.12.2017, 30.10.2018, 8.12.2018 and 6.12.2018. That, on 21.2.2019 the respondent No.3 could not attend the Investigating Officer and therefore she has submitted the application in that behalf. Mr. Pandey submitted that, on the said dates the respondents have attended the Investigating Officer and have submitted their written statements/replies/communications to the concerned Police Station and acknowledgements to that effect have been obtained. He therefore prayed that, after taking into consideration the said written statements/replies/communications filed by the respondents, the present application for cancellation of anticipatory bail may be rejected.

9] The learned APP after perusing the reply and on instructions from the Investigating Officer who is personally present in the Court submitted that, the respondents did not attend the Investigating Officer and have not produced their specimen signatures and therefore the investigation of the present crime could not be completed. She submitted that, the learned Additional Sessions Judge while granting pre-arrest bail to the respondents has specifically imposed the aforestated two conditions, which the respondents have violated and therefore the pre-arrest bail

granted to the respondents may be cancelled. She further submitted that, perusing the aforestated written statements/replies/communications would indicate that, the same were tendered to the Dispatch Clerk of the said police station, who has acknowledged the same. She submitted that, fact remains that the respondents did not attend the Investigating Officer and have failed to co-operate in the process of investigation.

10] Mr. Pandey, the learned counsel for the respondents reiterated the stand of the respondents that, they had co-operated with the Investigating Agency by submitting aforestated written statements/replies/communications and disputed the submissions made by the learned APP. This Court therefore directed the learned APP to file a short affidavit in support of her contention and the present application was thereafter kept for hearing in the second session of the day. In the second session, the learned APP tendered across the bar an affidavit of Mr. Prakash T. Sutar, Investigating Officer. It is stated in the the said affidavit that, during the course of investigation the police made correspondence with the accused from time to time with regard to the investigation, however, the respondents failed to remain present before the Investigating Officer and instead submitted written statements in Dispatch Room of the Aazad

Maidan Police Station. It is further stated that, the respondents have not co-operated with the investigation and therefore the anticipatory bail granted to the respondents may be cancelled.

11] After perusing the affidavit of the Investigating Officer, this Court queried Mr. Pandey, the learned counsel for the respondents, about the non-attendance by the respondents and their submission of written statements instead of attending the Investigating Officer and giving their specimen signatures. Mr. Pandey submitted that, he has to take further instructions pertaining to the facts mentioned in the affidavit and the matter be deferred for further hearing. When this Court pointed out to Mr. Pandey that, the present application is kept for hearing today with a clear understanding of its final disposal, he submitted that, he is not being granted fair opportunity to argue the matter. He further submitted that, there is no urgency in the present application of being heard. He submitted that, the statements of the Investigating Officer on oath are false and he will advise his clients to pursue proceedings for perjury against him. He submitted that, the affidavit is silent about the dates on which the respondents were served with notices for attendance.

12] I have perused the record of investigation produced before me.

The case diary discloses that, the respondents were served with necessary notices calling upon them to attend the Investigating Officer in pursuance of Order dated 18th August 2016 passed by the learned Additional Sessions Judge, Greater Mumbai while granting pre-arrest bail to the respondents. The case diary maintained by the Investigating Officer duly corroborates the said fact. In the compilation of documents annexed to the written statement of the respondents, the communications/written statements dated 24.2.2016, 27.3.2016, 11.12.2017, 14.12.2017, 30.10.2018 and 8.12.2018 are annexed. It is to be noted here that, the said written statements/communications are acknowledged by the Dispatch Clerk attached to Azad Maidan Police Station. The record of investigation and the record annexed to the written statements produced by the learned counsel for the respondents is silent about the fact that the respondents in fact attended the Investigating Officer in pursuance of directions issued by the learned Additional Sessions Judge, Greater Mumbai by its Order dated 18th August 2016. The record further indicates that, the respondents did not appear before the Investigating Officer as and when called for and have failed to produce their specimen signatures for further investigation of the present crime. Submitting written statements/communications to the

Police station and getting acknowledgement from the Dispatch Clerk was not expected by the Trial Court while granting pre-arrest bail to the respondents. The respondents have failed to give their specimen signatures in last more than two and half years. The respondents by not appearing before the Investigating Officer, despite of notice and their submitting of aforestated written statements clearly indicates that, the respondents have shown scant respect to the Order passed by the learned Additional Sessions Judge, Greater Mumbai and have taken the Investigating Agency for a ride. This cannot be countenanced.

13] The record of investigation clearly indicates and it is apparent that, the respondents Nos. 1 to 4 have violated the conditions imposed upon them by the learned Additional Sessions Judge, Greater Mumbai by its Order dated 18th August 2016 in A.B.A No. 598 of 2016.

14] In view thereof, pre-arrest bail granted to the respondent Nos.1 to 4 by Order dated 18th August 2016 passed by learned Additional Sessions Judge, Greater Mumbai in A.B.A No. 598 of 2016 is hereby cancelled and the respondent Nos.1 to 4 are directed to surrender before the Investigating Officer of the Azad Maidan Police Station, Mumbai within a period of three weeks from the date on which this Order is uploaded on

the computer system/High Court Website.

Application is allowed in the aforesaid terms.

15] In view of the Order passed in Criminal Application No.548 of 2016, Criminal Application No.732 of 2019 does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)