

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

CRIMINAL REVISION APPLICATION NO.564 OF 2019

Haresh J. Matani

& Ors.

... Applicants

Versus

Manjusha Rajkumar Gupta

& Anr.

... Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 565 OF 2019

Haresh J. Matani

& Ors.

... Applicants

Versus

Bharat Chheleshankar Bhatt

... Respondent

WITH

CRIMINAL REVISION APPLICATION NO. 566 OF 2019

Haresh J. Matani

& Ors.

... Applicants

Versus

Natvarlal Dayuashanker Vora

& Anr.

... Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 567 OF 2019

Haresh J. Matani

& Ors.

... Applicants

Versus

Sudhir Sunil Barsainya

& Ors.

... Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 568 OF 2019

Haresh J. Matani

& Ors.

... Applicants

Versus

Rupa Saurabh Thakore

& Ors.

... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 569 OF 2019**

Haresh J. Matani

& Ors.

... Applicants

Versus

Pushpa Shantilal Gindra

& Anr.

... Respondents

Mr.Vineet Jain i/by Mr.Ramesh Jain for revision applicant in all 6 revision applications.

Adv.Mannah Bindora a/w. Ms. Anjali Ghuge h/f Kulkarni and Associates for respondent No.1 in REVN Nos. 564 of 2019, 566 of 2019, 567 of 2019 and 568 of 2019.

Mr. S. K. Chaurasia i/b Mr.S.N. Raj for respondent No.1 in REVN Nos.565 of 2019 and 569 of 2019.

Mr. N. B. Patil, APP for respondent-State in all 6 revision applications.

CORAM : N.J. JAMADAR, J.

DATE : 20th DECEMBER, 2019.

P. C. :-

1. The challenge in these revision applications is to a common order passed by the learned Additional Sessions Judge, Greater Bombay dated 1st November 2019 in application Nos.1549/2017, 1550/2017, 1564/2017, 1565/2017, 1545/2018 and 2028/2019, whereby the learned Sessions Judge was persuaded to allow the applications under section 439(2) of the Code of Criminal Procedure, 1973 ('the Code') and set aside the order dated 11th April 2017 passed by the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai

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in Bail Application No. 113/BA/2017, whereunder, the applicant No.1- Mr. Haresh Jivandas Matani, 2. Mr. Harshesh H. Matani and 3. Mr. Rajendra M. Danthi were directed to be released on bail on furnishing Personal Bond of Rs.2,00,000/- each with solvent surety in the like amount and additional cash security of Rs.1,00,000/- each. The learned Sessions Judge was persuaded to grant four weeks time to the applicants to surrender before the learned Additional Chief Metropolitan Magistrate.

2. The principal ground, on which the learned Additional Sessions Judge exercised the jurisdiction to cancel the bail granted to the applicants was that the applicants were arraigned, *inter-alia*, for an offence punishable under section 409 of the Indian Penal Code, 1860 ('Penal Code'), which entails punishment of imprisonment for life. The learned Sessions Judge was of the view that in the absence of any special ground, the learned Magistrate had no jurisdiction to release the applicants on bail as the offence was punishable with imprisonment for life.

3. When these applications were listed before the Court on 4th December 2019, a preliminary objection was raised regarding tenability

of the revision applications as the impugned order is interlocutory in nature. This Court had extended the time to surrender till next date and kept all the contentions of the parties open for consideration, including that of the tenability of the revision applications.

4. The matter was heard on 18th December 2019, the day before yesterday. The learned counsel for the respondents urged that it is well neigh settled that an order of granting, refusing or even cancelling the bail, already granted, is not susceptible to revision being interlocutory in nature. In support of the aforesaid submission, reliance was placed on the judgment of the Supreme Court in the case of *Amar Nath & Ors. Vs. State of Haryana & Anr.* ¹, and judgments of this Court in the case of *Mohan @ Mannu Radhamal Basantani Vs. State of Maharashtra* ², and *State of Maharashtra Vs. Sanjay Moreshwar Damle & Ors.* ³.

5. In opposition to this, the learned counsel for the applicants urged that the learned Sessions Judge proceeded on an incorrect premise that the learned Magistrate had no jurisdiction to release the

1 (1977) 4 SCC 137

2 1989 Mh.L.J. 613

3 1993(3) Mh.L.J. 881

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applicants on bail when the offence entails punishment of imprisonment for life. However, the learned counsel for the applicants could not bolster up his submission that the impugned order can be assailed in revision.

6. It is not necessary to refer to the judgments cited on behalf of the respondents. It is now fairly well recognized that an order granting, refusing or even cancelling the bail is not revisable and falls in the category of interlocutory orders. The grant or refusal of bail does not terminate the proceedings one way or other. Nor does it decide the rights of the parties finally. Thus, it cannot be said to be an intermediary order as well. Resultantly, the revision applications against the order of cancellation of bail are not maintainable.

7. Faced with the aforesaid difficulty, the learned counsel for the applicants sought permission to withdraw the revision applications with liberty to take out appropriate proceedings to work out the remedies of the applicants.

8. The learned counsel for the applicants submitted that the protection granted by this Court needs to be extended as the

applicants were on bail from the date of the order of the learned Metropolitan Magistrate.

9. The learned counsel for the respondents opposed the prayer for grant of further protection to the applicants.

10. It is imperative to note that the applicants were directed to be released on bail, by order dated 11th April 2017. By the impugned order passed on 1st November 2019, the order of grant of bail came be set aside. The legality, propriety and correctness of the impugned order, especially on the premise that the learned Magistrate had no jurisdiction to release the applicants on bail when the offence entails punishment of imprisonment for life, though the learned Magistrate was competent to try the said offence, is required to be considered. The fact that the applicants have been on bail for more than one and half years tilts the scale in favour of the applicants. If the time to surrender is not extended, the applicants will be compelled to surrender before the learned Magistrate in terms of the impugned order.

11. In the peculiar circumstances of the case, it seems expedient in

the interest of justice to allow the learned counsel for the applicants to withdraw the revision applications with liberty to file appropriate proceedings in respect of the impugned order, and extend the time to surrender by a reasonable period, so that the their personal liberty is not infringed.

12. Hence the following order :

- (i) The revision applications stands dismissed as withdrawn with liberty to file appropriate proceedings.
- (ii) The time granted by the learned Additional Sessions Judge to surrender, by the impugned order and extended by this Court, stands further extended by three weeks.
- (iii) The revision applications stand disposed of in the above terms.

(N.J. JAMADAR, J.)