

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1109 OF 2017****IN****BAIL APPLICATION NO.1719 OF 2013**

THE STATE OF MAHARASHTRA

.....APPLICANT

Vs.

ASLAM SHABBIR SHEIKH @
BUNTY JAGIRDAR

.....RESPONDENT

Mr. Raja Thakare, Special Public Prosecutor a/w Ms. J.S. Lohokare
APP, for the Applicant-State.

Mr. Niranjana Mundargi for the Respondent.

CORAM : A. S. GADKARI, J.**DATE : 18th APRIL, 2019.****P.C.:-**

This is an Application under Section 439 (2) of the Code of Criminal Procedure 1973, for cancellation of bail of the Respondent, granted by this Court by Order dated 1st October, 2015 in C.R. No. 168 of 2012 initially registered with Deccan Police Station, Pune and subsequently investigated by ATS Police, Mumbai having re-numbered as C.R. No.9 of 2012 for the offences punishable under Sections 307, 435 and 120B of the Indian Penal Code read with Sections 3, 4 and 5 of the Explosive Substances Act read with Sections 3 and 25 of the Arms Act and under Sections 16(1)(b), 18, 20, 23, 38

and 39 of the Unlawful Activities (Prevention) Act, 1967 as amended in 2008 and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

2 Heard Mr. Thakare, the learned Special P.P. for the Applicant-State and Mr. Mundargi the learned counsel for the Respondent. Perused the entire record produced before me.

3 The present Application is filed by the Applicant-State on three counts- (i) the Respondent failed to comply with the directions issued by this Court while releasing him on bail namely, failed to appear and mark his attendance before the Investigating Agency on 6th May, 2017, 1st July, 2017, 5th August, 2017 and 2nd September, 2017; (ii) the Respondent also did not attend the Trial Court on 24th March, 2017, 16th August, 2017 and 20th September, 2017 without any justifiable reason and (iii) after his release from jail, five cases have been registered against him at Shrirampur police station, District Ahmednagar. The said crimes are C.R. Nos. 126 of 2016, 128 of 2016, 129 of 2016, 130 of 2016 and 160 of 2017. A chart mentioning the crime numbers, Sections applied to the said crimes, date of arrest of the Respondent and the status of the said case is annexed at page No. 52 of the present Application.

4 Mr. Mundargi, the learned counsel appearing for the Respondent submitted that, on 6th May, 2017, the Respondent could not mark his presence before the concerned Investigating Officer as his daughter was hospitalized. However, he could not justify the non-marking of presence of the Respondent before the concerned Investigating Agency on rest of the three dates i.e. on 1st July, 2017, 5th August, 2017 and 2nd September, 2017.

As far as the non-attendance of the Respondent before the Trial Court is concerned, Mr. Mundargi, the learned counsel pointed out that, on two occasions i.e. on 16th August, 2017 and 20th September, 2017, the Respondent had filed Applications for exemption before the Trial Court below Exhibits 189 and 192 respectively and the Application dated 16th August, 2017 filed below Exhibit 189 was allowed by the Trial Court. He, however, fairly pointed out that, the subsequent Application dated 20th September, 2017, filed below Exhibit 192 was turned down by the Trial Court.

The learned counsel further submitted that, the Crime Nos. 126 of 2016, 128 of 2016, 129 of 2016 and 130 of 2016 are basically lodged out of one and same incident of a riot which took place in the city of Shrirampur, District Ahmednagar between 10.30

p.m. of 8th May, 2016 to 1.00 a.m. of 9th May, 2016 between two communities. He submitted that, the first crime i.e. C.R. No. 126 of 2016 has been lodged by a Police Officer and the other three crimes bearing Nos. 128 of 2016, 129 of 2016 and 130 of 2016 have been lodged by different residents of the said city, as their properties were also targeted by the miscreants involved in the said riot. He submitted that, in all the said four cases, the Respondent has been granted pre-arrest bail by the learned Additional Sessions Judge, Shrirampur by its Orders dated 23rd June, 2016 passed below Exhibit-1 in (i) Criminal Miscellaneous Application No. 121 of 2016 in C.R. No. I-126 of 2016; (ii) Criminal Miscellaneous Application No. 231 of 2016 in C.R. No. I-128 of 2016; (iii) Criminal Miscellaneous Application No. 230 of 2016 in C.R. No. I-129 of 2016 and; (iv) Criminal Miscellaneous Application No. 122 of 2016 in C.R. No. I-130 of 2016.

He submitted that, as the Respondent was not present at the scene of offence or even in the city of Shrirampur on the date of the alleged commission of riot, the Trial Court has granted pre-arrest bail to the Respondent in the said four crimes by its Order dated 23rd June, 2016.

He further submitted that in Crime No. 160 of 2017, the Respondent was arrested by the police and now has been released on regular bail by the learned Additional Sessions Judge, Shrirampur in Bail Application No.187 of 2017 by its Order dated 27th November, 2017. He submitted that in CR. No. 160 of 2017, the Respondent was arrested by the Police and after interrogation, the police have submitted charge-sheet.

He submitted that, in the said crime i.e. C.R. No. 160 of 2017 the prosecution never contended before the Trial Court that, the Respondent has committed the said crime while on bail and therefore, the Trial Court was pleased to grant bail to the Respondent. He further submitted that, the police somehow wants the Respondent to be behind the bars and therefore, are lodging crimes after crimes against the Respondent. He, therefore, prayed that the present Application may be rejected.

5 The record clearly indicates that, while releasing the Respondent on bail by Order dated 1st October, 2015, this Court has imposed specific conditions namely, (i) the Respondent shall attend the Kalachowky Police Station, A.T.S., Mumbai once in a month on every first Saturday between 11.00 a.m. to 12.00 noon till the

conclusion of trial and (ii) that, the Respondent to co-operate with the conduct of the trial and (iii) liberty has been granted to the prosecution to seek cancellation of the Respondent's bail, if there is a breach of any of the conditions.

6 Shri Ramchandra Jadhav, Assistant Commissioner of Police attached to Anti Terrorism Squad, Maharashtra State, Mumbai has filed an additional Affidavit dated 2nd July, 2018 wherein, it is categorically stated that, the Respondent did not mark his attendance with the ATS Kalachowky Police Station, Mumbai on 6th May, 2017, 1st July, 2017, 5th August, 2017 and 2nd September, 2017. It is further categorically stated that, the Respondent did not attend the Trial Court on 24th March, 2017, 16th August, 2017 and 20th September, 2017.

7 It is to be noted here that, as far as the attendance of the Respondent before the Trial Court on 16th August, 2017 is concerned, the Trial Court had granted him exemption from attending the proceedings on that particular day by allowing his Application filed below Exhibit 189. As far as the Application preferred by the Respondent on 20th September, 2017 for the exemption is concerned, the same was turned down by the Trial Court by its Order dated 20th

September, 2017 passed below Exhibit- 192.

Thus, it is clear that, the Respondent has failed to mark his presence before the ATS Kalachowky Police Station, Mumbai on the aforestated dates and has also failed to attend the Trial Court on 24th March, 2017 and 20th September, 2017 without any justifiable reason.

8 This leads me to deal with the fact of lodgment of five crimes against the Respondent after his release on bail.

Assuming for the sake of argument, the contention of the learned counsel for the Respondent is accepted to the extent that, the four crimes namely C.R. Nos. 126 of 2016, 128 of 2016, 129 of 2016, 130 of 2016 have arisen out of the basic incident i.e. riot taken place in the intervening night of 8th May, 2016 and 9th may, 2016 in the city of Shrirampur and the Respondent was not present in the said city on that particular day, the fact cannot be overlooked that, the Respondent has been impleaded in the said crimes with the aid of Section 120-B of the Indian Penal Code.

It is the fact on record that, by accepting the *prima facie* contention of the Respondent the Trial Court has granted pre-arrest bail to him in the said four crimes by its Orders dated 23rd June, 2016.

9 It is to be noted here that, as far as the Crime No. 160 of 2017 is concerned, it is the specific prosecution case that, the Respondent was externed from the city of Shrirampur and on 24 June, 2017 at about 8.05 p.m. he entered into the jurisdiction of the said city. The Respondent along with co-accused was travelling from a four wheeler vehicle when he was noticed by the police personnel on duty. The informant namely Shri Balasaheb Vethekar, Police Head Constable attached to Shrirampur City Police Station asked the Respondent to stop the said four wheeler vehicle when the Respondent directed his driver (co-accused) to dash the two wheeler motor-cycle of the police (informant) as the police might have arrested him. That, under the instructions of the Respondent, the driver of the said four wheeler vehicle gave a dash to the two wheeler motor-cycle of the said police personnel and tried to commit his murder and therefore, the crime bearing No. I-160 of 2017 dated 24th June, 2017 has been lodged against the Respondent.

10 It is thus clear that, when on bail in the present crime i.e. in CR. No. 9 of 2012 registered with ATS Police Station, Mumbai, the Respondent has committed the said crime bearing No. I-160 of 2017 wherein, it is alleged that the Respondent tried to commit murder of a

police personnel, who was performing his lawful duty. As noted earlier the Respondent is named as an accused in the aforesaid four other crimes also after his release from jail.

The aforesaid deliberation would lead to arrive at a clear conclusion that, the Respondent has violated the conditions imposed upon him while releasing him on bail by this Court by its Order dated 1st October, 2015 and therefore, the bail granted to the Respondent needs to be cancelled.

11 In view of the above, the bail granted to the Respondent by Order dated 1st October, 2015 in Bail Application No. 1719 of 2013 is hereby cancelled. The Respondent is directed to surrender before the Investigating Agency within a period of four weeks from today.

Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)