

Anand

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

**CRIMINAL APPLICATION NO. 1495 OF 2018
IN
BAIL APPLICATION NO. 1249 OF 2018**

Kusum Kulchandra .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr. Shantanu R. Phanse, Advocate, for the Applicant

Mr. P. H. Gaikwad-Patil, APP, for the Respondent No. 1 – State

Ms Sonal Parab i/b. Rajeev Sawant & Associates, Advocate, for the
Respondent No. 2

Mr. Sudhir Ghosalkar, PI, Borivali Police Station, Mumbai present

CORAM : REVATI MOHITE DERE, J.

DATE : 23.07.2019

P.C.

. This is an Application seeking cancellation of the Respondent No. 2's bail on the ground of non-compliance of the order dated 03.08.2018 passed by this Court (A. S. Gadkari, J.) in B. A. No. 1249 of 2018. Despite directing the Respondent No. 2 to remain present vide order dated 18.07.2019, the Respondent No. 2 is not present. It is not in dispute that the order granting bail to the Respondent No. 2 was not on merits but only in view of the undertaking given by the Respondent No. 2's father that he would deposit Rs. 38,55,475/- in the

Registry of this Court, as stated in the Affidavit-cum-undertaking. The said Affidavit-cum-undertaking was marked as “X” for identification and was accepted. It is not in dispute that out of the aforesaid amount of Rs. 38,55,475/-, the Respondent No. 2's father – Kiran Surve who had given the Affidavit-cum-undertaking has deposited only Rs. 15,00,000/-. It is also not in dispute that the balance amount was to be deposited in two equal instalments on or before 02.02.2019. It was also clarified in para 5 of the aforesaid order which reads thus :-

“ 5) It is made clear that, the period to deposit of the said balance amount shall not be extended hereinafter on any account. It is further made clear that if the said Mr. Kiran Surve commits default in making the said payment on or before stipulated dates, bail granted to the applicant shall stand cancelled, without further reference to this Court.”

2. Learned counsel for the Respondent No. 2 does not dispute the fact that the Respondent No. 2's bail was not on merits but only in view of the undertaking given by her father. She also does not dispute the fact that the Affidavit-cum-undertaking given by the Respondent No. 2's father has not been honoured. No Application seeking extension of time to deposit is also filed. Learned counsel for the Respondent No. 2 states that she has sent two emails to the Respondent No. 2 asking

her to remain present, however, she submits that the Respondent No. 2 has not replied to the said two emails.

3. Considering that there is non-compliance of the order dated 03.08.2018, in particular Clause 5) of the said order, the Respondent No. 2's bail stands cancelled.

4. Accordingly, the Application is disposed of.

(REVATI MOHITE DERE, J.)