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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 434/2019 and Crl. M.A. nos. 1890-91/2019

MILIND LAVATE Petitioner
Through Mr. Puneet Mittal, Sr. Advocate

versus

THE STATE Respondent
Through Mr. Amit Chadha, APP with SI
Praveen Badsara, EOW
Mr. Akhil Sachar, Adv. for
complainant

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **28.01.2019**

Petitioner is aggrieved by the order dated 28th November, 2018 passed by the learned trial court, whereby bail granted to him, vide order dated 1st August, 2018 has been cancelled.

Vide order dated 1st August, 2018 trial court had admitted the petitioner to bail purely on the ground of settlement having been arrived at between the petitioner and complainant on 7th July, 2018. Operative portion of the order reads as under:-

“The present matter has been settled between the complainant and accused in terms of the settlement

deed dated 07.07.2018 with certain conditions which have to be complied the accused and accused has also undertaken to comply all the conditions. The original settlement is on record executed between the accused and complainant.

Considering the above said facts and circumstances of the case, accused Miling Sadashiv Lavate is granted bail on his furnishing PB/SB in sum of Rs.50,000/- with one surety in the like amount subject to following conditions as under:-

- (i) that accused shall complied with the all the conditions of settlement terms cum memorandum of agreement dt. 07.07.2018 within one month;
- (ii) that complainant is at liberty to move appropriate application for cancellation of bail of accused, in case, non-compliance of the settlement terms cum memorandum of agreement dt. 07.07.2018;
- (iii) that accused shall join the investigation as and when required;
- (iv) that the accused shall not leave the country without seeking prior permission from the court;
- (v) that the accused shall attend the proceedings either before the IO or before the court, in accordance with the conditions of the bonds executed by him;
- (vi) that the accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence;
- (vii) that the accused shall not indulge or commit such like offence(s) again similar to the offence to which he is accused now.

With above observation, bail application stands disposed off. Copy of this order be given to Ld. Counsel for accused.”

It is an admitted fact that terms of the settlement have not been complied with. Pursuant to the settlement order dated 7th July, 2018 petitioner had agreed to pay Rs.6.5 crores to the complainant. However, petitioner has not paid even a single penny to complainant.

Vide order dated 28th November, 2018 trial court has cancelled the bail in view of the non-payment of the settled amount. It is noted that charge-sheet has already been filed and trial is pending.

As is evident from the order dated 1st August, 2018 that bail was not granted on merits. Bail was granted purely on the ground of settlement. It was specifically stipulated in the bail order that complainant would be at liberty to move an appropriate application for cancellation of bail in case of non-compliance of the agreement.

Learned Senior counsel has vehemently contended that terms and conditions as stipulated in the agreement are onerous, inasmuch as, are illegal. It is further contended that amount was to be paid out of the bank accounts frozen by the investigation authority. Since accounts were not defrozen, the amount could not be paid to complainant.

Learned APP, on instructions of Investigating Officer, submits that only one bank account was frozen, in which only ₹71,00,000/- was

available. Remaining settled amount was to be paid by the petitioner of his own. However, petitioner has not paid even a single penny to complainant. It is further contended that petitioner is also involved in two more similar criminal cases, registered at Mumbai. He further submits that settlement was signed by the petitioner in Court in presence of his counsel. Petitioner now cannot take a plea that terms of settlement are onerous and illegal and cannot be complied with. Petitioner has availed the benefit of settlement as he was released from jail and has still not surrendered.

It is clear from the above that petitioner was not granted bail on merits. He was granted bail in view of the settlement only. The complainant was granted liberty to file an application for cancellation of bail in case the terms of settlement were not complied with. Hardly ₹71,00,000/- was lying deposited in the bank account, which was frozen. Rest of the amount was to be paid by the petitioner. However, petitioner did not make endeavour to pay any amount.

For the foregoing reasons, I am of the view that the trial court has rightly cancelled the bail of petitioner. I do not find any justification to interfere with the impugned order. However, it is made clear that petitioner would be at liberty to apply for bail on merits after surrendering in court. If

any such application is filed by the petitioner, the same may be considered by the trial on its own merits.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 28, 2019
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