

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.26 OF 2020

Qudsia w/o Fakhru Baig Inamdar

... Applicant

Versus

1. The State of Maharashtra
2. Shaikh Khalil s/o Shaikh Abdul Razzak

... Respondents

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Mr. S. C. Arora, Advocate for applicant.
Mr. S. R. Yadav, APP for respondent No.1-State.
Mr. U. D. Dalvi, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10-12-2020

ORDER :

1. Present application has been filed under Section 439(2) of the Code of Criminal Procedure to challenge the order dated 11-09-2019 passed by the learned Additional Sessions Judge, Dist. Aurangabad in Bail Petition No.1769 of 2019, thereby granting anticipatory bail to respondent No.2.

2. The applicant is the original informant. Respondent No.2 is the original accused against whom the applicant has filed FIR. It has been contended by the applicant in her first information report that she was introduced to respondent No.2 in September, 2018 by one auto rickshaw driver, who was known to her. It was impressed on her that the present applicant is a

good and rich person. He is in the business of sale of plots and he is desirous of meeting her. Thereafter, the applicant was physically introduced to her on 20-10-2018. The impression was given that respondent No.2 would be selling an old company belonging to him situated at Punjab for Rs.3,52,00,000/- as he does not have cash in hand now. Thereafter, he went away, but came on the next day. Husband of the informant was present in the house. It was impressed on both of them that the applicant has desire to give certain financial help at Umra to Muslim persons and, therefore, he demanded amount of Rs.60,000/- from them. Husband of the informant agreed, as it was for a good reason. When they expressed their inability, it was impressed by the present applicant that they can collect it from their relatives. Informant gave cash of Rs.60,000/-, which was with her in her house. On the third day, applicant again visited her house and demanded amount of Rs.40,000/-. As he had gained confidence, informant gave him Rs.40,000/-. Thereafter, after such representations one after the other, the informant says that even by placing her ornaments on mortgage, she raised the amount and in all she had given amount of Rs.33,80,000/- as well as certain gold ornaments to respondent No.2. She ultimately lodged a report against respondent No.2 contending that the he has cheated and misappropriated the amount from her.

3. Present respondent No.2 was arrested and after undergoing the due period granted by the concerned Court, he filed application bearing Bail Petition

No.1769 of 2019 for regular bail under Section 439 of the Code of Criminal Procedure. Learned Additional Sessions Judge, Aurangabad allowed the said bail petition on 11-09-2019 and now, the present application has been filed for cancelling the said order.

4. Heard learned Advocate Mr. S. C. Arora for applicant, learned APP Mr. S. R. Yadav for respondent No.1 – State and learned Advocate Mr. U. D. Dalvi for respondent No.2.

5. It has been vehemently submitted on behalf of learned Advocate for the applicant – informant that the learned Additional Sessions Judge erred in granting bail to respondent No.2. He did not consider the manner in which the offence has been committed. He also did not see that the informant is a lady of 74 years and her husband is elder to her. The husband of the informant is getting pension and still by representing them in such a way and after getting their confidence, respondent No.2 has cheated them. Nothing has been recovered by the Investigating Officer. In fact, the applicant had placed documents showing the cases filed against respondent No.2 by other persons as well as her bank statements showing that she had extended the amount. However, learned Additional Sessions Judge, did not consider it. Learned Additional Sessions Judge also failed to consider that the police have intentionally not invoked Section 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as the 'MPID Act'). By virtue

of that Section, police could have attach the properties of the accused on default of return of deposits. In that connection, there would have been no questions for the police to go after recovery. The amount of the applicant would have been then secured. The applicant is an old lady and she is having a disabled son. Now, since the accused has been granted bail, there is any chance of recovery of her amount. She will not get justice in such circumstance.

6. Per contra, learned Advocate representing respondent No.2 after pointing out the affidavit-in-reply filed by respondent No.2 submitted that the applicant is having full knowledge about the completion of investigation and filing of charge-sheet. She is fully aware about the fact that the provisions of Section 3 of the MPID Act have been dropped. The application filed by the present applicant at Exhibit-19 in R.C.C. No.229 of 2020 for return of gold under Section 457 of the Code of Criminal Procedure is still pending before the learned Judicial Magistrate First Class. Respondent No.2 has not violated any term of bail and he is remaining present on the dates given by the concerned Court. Therefore, there is absolutely no necessity to cancel the bail. Reliance has been placed by learned Advocate for respondent No.2 on the decision in ***Myakala Dharmarajam and others etc. Vs. The State of Telgana and another, [AIR (SC) (2020) 317]***, wherein the following observations have been made :-

“7. In Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused

misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”

7. At the outset, it is to be noted that now the entire investigation appears to have been completed and charge-sheet is also filed. If at all the applicant is not satisfied with the investigation that has been carried out by the police, then the remedy for the applicant is elsewhere. It cannot lie in the form of cancellation of bail granted to respondent No.2 – accused. Further, perusal of the order passed by learned Additional Sessions Judge would show that the present applicant had resisted the bail petition by engaging Advocate of her choice and she had filed the documents. Those documents have been considered by the learned Additional Sessions Judge. Though the statement of account of the applicant have been produced on record, except one entry of Rs.1,00,000/-, there is no direct entry about the transfer of money by her to accused. It has

been submitted that after she has withdrawn the amount, she has handed over the same to the accused and thereby the amount is totaling to Rs.33,80,000/-. It is a matter of evidence, therefore, it is for her to show that she had extended that much amount to the accused. Further, in respect of the provisions under MPID Act are concerned, she is at liberty to point out it to the concerned Court that though these provisions are applicable, the police have not invoked. For that purpose also, cancellation of bail cannot be the remedy. The ratio in **Myakala's** case (Supra) is very much clear.

8. Further, the Hon'ble Supreme Court in **Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)** has held that, *"it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out"*. The principles laid down in **Daulatram Vs. State of Haryana, (1995) 1 SCC 349)** have been reiterated, those are as follows :-

"Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should

not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

9. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

“It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

10. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, *when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act*

in a mechanical manner.”

11. Since no error has been committed by the learned Additional Sessions Judge while granting regular bail to respondent No.2 and also care has been taken to impose necessary conditions, there is no need to invoke the powers of this Court under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm