

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.625 OF 2020
with
CRIMINAL APPLICATION NO.1680/2020

1. Sameer s/o Babulal Qureshi
and two ors. = PETITIONERS
(Orig.Accused)

VERSUS

1. The State of Maharashtra
and Ors. = RESPONDENT/S

Mr.NB Narwade, Advocate for petitioners;
Mr.AM Phule, APP for Respondent No.1-State;
Mr.SJ Salunke, Advocate for Respondent No.2;
Mr.GR Syed, Advocate for Intervenor.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 27th October, 2020.

PER COURT:-

1. Criminal Application No.1680/2020 moved
for intervention in the Writ Petition is allowed
and disposed of.

2. The Writ Petition has been filed by
original accused persons, invoking constitutional
powers of this court, under Article 226 and 227 of
the Constitution of India, to challenge order dated
2.3.2020 passed by learned Additional Sessions
Judge, Ahmednagar in Criminal Misc. Application No.

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16/2020, whereby anticipatory bail granted to the petitioners on 4.4.2019 and confirmed on 16.4.2019 in Criminal MA No.631/2019 in CR No.35/2019, registered with Kotwali Police Station, Ahmednagar on 8.1.2019 for the offences punishable under Sections 307, 308, 452, 326, 324, 143, 147, 148, 149 of IPC and under Section 4 punishable under Section 25 of Arms Act, came to be cancelled, on the application filed by present Respondent No.2 – Arif s/o Shabbir Shaikh.

3. Heard learned Advocates and learned APP appearing for respective parties.

4. It has been vehemently submitted on behalf of the petitioners that Respondent No.2 is brother of original informant and he is stated to be victim/injured in the incident, who had filed the said application for cancellation of bail granted to the petitioners. In fact, the informant had also filed another application for cancellation of bail and when it was noted by the present petitioners that both are claiming same relief, they had filed an application for transfer of one

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of the applications to another Court. However, thereafter the original informant withdrew his application.

. After giving story in the FIR, learned Advocate for the petitioners submitted that when the petitioners had approached the learned Additional Sessions Judge for anticipatory bail, interim relief was granted on the application filed at Exh.4. A condition was imposed that the applicants (present petitioners) shall attend the concerned police station on 2nd Sunday of every month between 10.00 AM to 1.00 PM till filing of charge sheet. According to present Respondent No.2, the petitioners never attended the police station. In fact, according to the petitioners, they had attended the police station as directed and the CCTV footage would reveal their attendance to the police station. When the information was sought by the petitioners under Right to Information Act, it was noticed that the Investigating officer was changed and the petitioners had cooperated with him for investigation. They have not misused the liberty granted to them; yet by holding that the present

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petitioners have not complied with the terms of the bail regarding attendance; the learned Additional Sessions Judge has cancelled the bail. Now, the investigation is over and charge sheet is filed. It was never presented by the Investigating Officer to the concerned court that the present petitioners are not cooperating with the investigation. In fact, the Investigating officer never filed any application under Section 439(2) of Cr.P.C., therefore, the impugned order, according to petitioners, would be illegal. The petitioners therefore, pray for setting aside the impugned order by exercising the constitutional powers of this Court.

5. Learned Advocate for the petitioners relied on the following authorities, -

a) 2013 ALL MR (Cri) 4163 – Bhagwat s/o Narayanrao Saidane Vs. State of Maharashtra & Anr;

b) 2020 Cri.L.J. 1447 – Myakala Dharamrajam and Ors. Vs. State of Telangana and Anr.

c) 2020 Cri.L.J. 1459 – Dr.(Prof.) Devinder Mohan Thapa Vs. State of Meghalaya and Anr.

d) 2018 SAR (Criminal_) 786 – Ms. X Vs.

State of Telangana and Anr.

e) 2008 CJ (SC) 966 – Manjit Prakash Vs. Shobha Devi.

f) 2014 CJ (SC) 785 – Abdul Basit Vs. Abdul Kadir Choudhari.

g) 2017 CJ (SC) 803 – Lt.Col.Prasad Shrikant Purohit Vs. State of Maharashtra;

h) 2006 ALL MR (Cri) 1315 – Mirza Ilyas Baig Mirza Sharif;

I) 2006 ALL MR (Cri) 1316 – Mrs. Shamim Aara Mohammad Ismail Vs. Union of India & Ors.

j) (2013) ALL MR (Cri) 1644 – Suresh Vs. Vinod and Anr.

k) (2009) 14 SCR 195 – Hazari Lal Das Vs. State of West Bengal and Anr.

6. Per contra, learned APP instructed/assisted by learned Advocate for the intervenor, submitted that the attendance condition was specifically imposed taking into consideration the allegations in the FIR and the offences with which the petitioners are charged. When the application was filed, charge sheet was not yet filed though the offences had taken place on 7.1.2019 and the FIR was lodged on 8.1.2019. Because of inaction on the part of the petitioners, charge sheet could not be filed for a considerable long time. It could be filed only after the

investigating Officer was changed.

. The learned APP has placed reliance on affidavit filed by the Investigating Officer and also affidavit filed by the intervenor. The learned APP has made available a photo copy of the register, in which the Police are taking entries regarding attendance of the accused to the police station when such attendance is directed under the orders of the Court. It was clearly submitted that for the first time the petitioners have attended the police station on 5.2.2020 when their formal arrest was shown by the Investigating Officer.

. It was also pointed out that two contrary reports were submitted by the Police Station Incharge; one states that the petitioners attended the police station while the another indicates that they did not. The learned Additional Sessions Judge has, therefore, made a specific mention in his order about the contrary reports. It was stated that both the reports were prepared by the Investigating officer. But, when the concerned P.I. was called along with the Investigating Officer, it was reported that the Investigating Officer had gone for training. Thereafter, the P.I.

appeared and submitted the second report, stating that the Investigating Officer himself had made counter signature on the register and, therefore, he believed the same. But, according to him, the accused persons had not attended the police station.

. It was further submitted on behalf of the respondents that the condition regarding attendance to the police station was not an empty formality. Work of filing the charge sheet got hampered and prolonged. The manner in which the offence was taken place is also required to be considered when it comes to cancellation of bail. Brother of the informant had locus to file the said application under Section 439(2) of Cr.P.C.

7. Learned Advocate for Respondent No.2 relied on following citations, -

I) Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte – AIR 1975 SC 1297;

II) Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavnappa Tirumale – AIR 1960 SC 137;

III) Mrs. Rena Drege Vs. Lalchand Soni – AIR 1998 SC 1990; and

IV) Puran Vs. Rambilas – 2001 ALL MR(Cri) 1210 SC.

They both, therefore, pray for rejection of the writ petition, contending that the learned Trial Court has not erred in cancelling the bail to the petitioners.

8. At the outset, it is to be firstly noted that the petitioners were facing the trial for the offences, referred to above. Secondly, they approached the Sessions Court with application under Section 438 of Cr.P.C. Thirdly, while granting interim protection, apart from releasing them on bail in the event of their arrest, the learned Additional Sessions Judge, Ahmednagar, imposed the condition that, the applicants shall attend the police station on 2nd Sunday of every month till filing of the charge sheet. Fourthly, the said interim protection granted on 4.4.2019 was thereafter confirmed on 16.4.2019 and the same conditions and terms were continued. In view of these orders, it was incumbent upon the petitioners/accused to attend the police station as directed.

9. As aforesaid, two reports were filed

after the bail application for cancellation was filed and report was called from the Investigating Officer. These reports were contradictory. However, when thorough enquiry has been made by this Court and got a photo copy of the attendance register produced, wherein, from the entries regarding attendance given by other accused persons, the practice that is adopted with the Kotwali police station appears to be that after the accused attends the police station along with a copy of the order, a copy of the order is kept in the said register either by pasting or taking a note thereof and signature of the accused is taken in token of his attendance. When oral enquiry was made with the learned Advocate for the petitioners as to whether or not there is any acknowledgment with the petitioners or any such document, showing that they had attended the police station as per the order, he submitted that the petitioners do not have any such documentary evidence. The fact then remains that there is nothing in support of the contention of the petitioners that they had attended the police station as directed in the order of granting bail.

10. We will have to rely on the evidence that is produced by the other side. In the affidavit in reply filed by the Investigating Officer would show that he had taken charge of the investigation in the matter on 29.9.2019. He has made a categorical statement that the petitioners have not attended the police station from 16.4.2019 to 6.2.2020. This clearly shows that the petitioners have not abided by and complied the terms of the bail. The ratio laid down in the cases, relied on by the learned Advocate for the petitioners, will not be applicable to the facts of the present case, wherein it has clearly come on record that though the petitioners were aware about the condition regarding attendance to the police station; yet they have not complied it and now they want to hide the said fact by making an incorrect statement that they had attended the police station. There is no other view that can be taken that the ground for rejection of bail stands on different footing whereas the grounds for cancellation of bail are harsh and different as laid down in Myakala Dharmarajam and Ors. Etc. Vs. The State of Telangana & Anr. - 2020 Cri.L.J. 1457. In Mirza

Ilyas Baig Mirza Sharif Vs. State of Maharashtra – 2006 ALL MR (Cri) 1315, this Court has held that, the Court cannot act in a mechanical manner but take a cautious approach when liberty is granted to the citizen is tried to be taken away by cancellation of the bail. In the instant case, the contents of the affidavit of the Investigating Officer as well as the points raised by the intervenor/Respondent No.2 would show that the charge sheet could not be filed for a considerable time. If we consider the entire case as well as the fact that since now the charge sheet is also filed then, the contents thereof would show that the muddemal used in the commission of the alleged crime is stated to have been destroyed by the accused persons. It was alleged that the accused persons have used stone, iron fight and revolver in commission of the offence in question. If the attendance would have been given by the present petitioners to the police station then definitely there would have been possibility of recovery. There is substance in the observations made by the learned Additional Sessions Judge, Ahmednagar that after grant of the anticipatory bail, the accused

persons never turned back and marked their presence due to which charge sheet could not be filed within prescribed time. Therefore, even at the beginning itself, it has been noted that the imposition of the terms to attend the police station was not an empty formality. There is absolutely no error committed by the learned Sessions Judge in cancelling the bail granted to the petitioners as they had failed to abide by the terms of the bail and, therefore, question of invoking constitutional powers of this court does not arise.

11. The ratio laid down in Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte (supra); Satyanarayan Laxminarayan Hegde Vs. Malikarjun Bhavanappa Tirumale (supra) and Mrs. Rena Drego Vs. Lalchand Soni (supra) would be applicable in this case, wherein, it has been held that the High Court cannot invoke the powers of superintendence under Article 227 of the Constitution of India, where there is no error apparent in the order passed by the judicially subordinate court. We cannot look at only right/s of the accused to whom liberty has been granted while releasing on bail. Equally

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attention is required to be given to the rights available to the prosecution as well as to the informant and/or victim. Acts and inactions of the accused may not be directly causing harm or danger to the victim or the informant; yet if it is affecting the investigating agency and the investigation agency is not diligently taking steps, then definitely a right is available to the informant or the victim to challenge the order of bail or get the bail cancelled in the event of breach of the terms of bail.

12. Though the Investigating officer has stated that now after 5.2.2020 till the charge sheet is filed on 6.4.2020, the petitioners had attended the police station; yet it can be seen that the petitioners have not given any sound, cogent and plausible reason for not attending the police station in between 16.4.2019 to 5.2.2020. The learned Additional Sessions Judge was right in cancelling the bail.

13. No case is made out to interfere and exercise the constitutional powers of this court

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either under Articles 226 or 227 of the Constitution of India and, therefore, the Writ Petition stands rejected.

(SMT. VIBHA KANKANWADI,J.)

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