

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.115 OF 2020

Mujahid Babulal Qureshi

... Applicant

Versus

1. The State of Maharashtra
2. Gayaj Shabbir Qureshi

... Respondents

.....

Mr. Amol S. Sawant, Advocate for applicant.

Mrs. Vaishali Jadhav Patil, APP for respondent – State.

Mr. G. R. Syed and Mr. S. J. Salunke, Advocates for original informant - respondent No.2.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10-12-2020

ORDER :

. Present criminal revision application has been filed by original accused No.1 invoking the powers of this Court under Section 401 of the Code of Criminal Procedure to challenge the order passed in Criminal Miscellaneous Application No.18 of 2020 on 01-12-2020 by learned Additional Sessions Judge, Ahmednagar under Section 439(2) of the Code of Criminal Procedure thereby cancelling the regular bail granted to the present applicant in connection with Crime No.35 of 2019 registered with Kotwali Police Station, District Ahmednagar for the offences punishable under Sections 307, 308, 324, 326, 452, 143, 147, 148, 149 of Indian Penal Code and Section 4/24 the Arms Act.

2. Heard learned Advocate Mr. A. S. Sawant for applicant, learned APP Mrs. Vaishali Patil Jadhav for respondent No.1 – State assisted by learned Advocate Mr. S. J. Salunke and learned Advocate Mr. G. R. Syed for respondent No.2 – original informant.

3. It has been vehemently submitted on behalf of the applicant that the applicant is original accused No.1. He is involved in the said case. He had filed Criminal Miscellaneous Application No.582 of 2019 for getting regular bail under Section 439 of the Code of Criminal Procedure. It came to be allowed by the learned Additional Sessions Judge, Ahmednagar on 09-04-2019. One of the condition that was imposed was thus :-

“2](b) The applicant/accused shall not leave the jurisdiction of the concerned police station without prior intimation to senior PI of concerned police station till the evidence of complainant is recorded.”

Thereafter, the informant filed Criminal Miscellaneous Application No.18 of 2020 under Section 439(2) of the Code of Criminal Procedure for cancellation of bail. It was contended that the present applicant has misused the liberty granted to him by the Court. It is stated that the applicant did not cooperate with the Investigating Officer. The accused had preferred a petition before this Court and in order to attend the Court, he was supposed to take permission in view of the aforesaid condition, however, he had not intimated his

said visit to the High Court Bench at Aurangabad and thereby he has breached the term. After hearing both sides, the learned Additional Sessions Judge, Ahmednagar on 01-12-2020 allowed that application and the bail granted to the present applicant was then cancelled. Hence, the present criminal revision application has been filed.

4. It has been fairly submitted on behalf of the applicant that a proper stand appears to have not been taken before the learned Additional Sessions Judge and at one place it was stated that he had not visited Aurangabad and at another place when affidavit sworn by the present applicant was produced, it appears that he has tried to admit the same. In fact, the bail was granted after considering all the aspects. He was not habitual offender. The learned Judge did not further made any inquiry as to actually the applicant had gone to the Aurangabad or not. Even if, it is accepted that he had gone to Aurangabad, but it was for the Court's work. He has every right to approach Higher Court for appropriate reliefs. That visit cannot be said to be intentional for committing breach of term of the bail. Such technical approach ought not to have been taken place by the concerned Court. He, therefore, prayed for setting aside of the impugned order and continuation of regular bail that is granted to the applicant.

5. Learned APP Mrs. Vaishali Jadhav Patil and learned Advocate Mr. S. J. Salunke assisted by learned Advocate Mr. G. R. Syed vehemently

submitted that when the petition in Criminal Miscellaneous Application No.17 of 2020 was filed before the Bombay High Court, Bench at Aurangabad, it showed that the said application was verified and sworn before Notary Shri. S. N. Solunke at Aurangabad on 01-01-2020. This is an interrogation to the condition that was imposed and, therefore, the learned Additional Sessions Judge has rightly cancelled the bail.

6. At the outset, it is to be noted that breach of term of any condition of bail cannot be so lightly taken. The intention behind such breach, even if it may appear, is required to be considered. If we consider the wordings of the term (b) in clause No.(2) that was imposed while allowing Criminal Miscellaneous Application No.582 of 2019, it can be seen that the intention behind imposing the same is to secure the presence of the accused in proper time and also to have a check on his illegal activities, if at all he undertakes. Temporary leaving of the jurisdiction may not be taken as a breach, if the intention can be gathered. Now, what was the evidence that was placed before the learned Additional Sessions Judge was that a petition was sworn for filing before this Court before a notary at Aurangabad. Definitely, the revision applicant had right to approach this Court for the reliefs and in that connection, if he was supposed to come to Aurangabad for a temporary period, then it cannot be taken as a breach of term of the bail which would be liable for the cancellation of the liberty granted to him. No activity which could be said to be

detrimental to the interest of or putting the informant or any other witness in danger has been stated to be done by the applicant. Though certain authorities have been relied by the learned Additional Sessions Judge, yet, the law on the same point can be noted in the following cases hereinafter.

7. In ***Myakala Dharmarajam and others etc. Vs. State of Telangana and another, (2020 CRI. L. J. 1457 : AIROnline 2020 SC 5)***, it has been observed that, *“the factors are to be considered while granting bail have been considered by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, the certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is any prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.”* Therefore, it was not necessary for the learned Judge to go into each and every allegation, consider the evidence that was collected uptill now. Only overview of the evidence collected ought to have been taken.

8. 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)*** would show that 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. Thus, after taking into consideration the ratio in the abovesaid cases, it can be said that the Courts are not required to take hyper technical approach and the real intention is then required to be enquired into. Here, no other intention just to sworn the affidavit or verification appears to be the purpose for his visit to Aurangabad and, therefore, it does not amount to breach of terms of condition. Therefore, action taken by the learned Additional Sessions Judge of cancelling his bail under Section 439(2) of the Code of Criminal Procedure deserves to be set aside. Hence, the following order :-

ORDER

- I) Criminal Revision Application stands allowed.
- II) The order passed below Exhibit-1 in Criminal Miscellaneous Application No.18 of 2020 by learned Additional Sessions Judge, Ahmednagar on 01-12-2020 of cancelling the regular bail granted to the present applicant and directing him to surrender before the committal Court or before Investigating Officer, is hereby set aside.
- III) It is clarified that in view of setting aside the order in Criminal Miscellaneous Application No.18 of 2020, the order passed in Criminal Miscellaneous Application No.582 of 2019 by learned Additional Sessions Judge, Ahmednagar on 09-04-2019 stands revived.

[SMT. VIBHA KANKANWADI, J.]

scm