

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.221 OF 2021

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Nana @ Narsing Vishwarasrao Nayak,
Age : 40 years, Occ. Business,
R/o Tapdiya Estate, Hingoli. 2. Rajkumar @ Raju S/o Vilas Nagre,
Age : 39 years, Occ, Agril.,
R/o as above 3. Kailas S/o Subhash Manbolkar,
Age : 28 years, Occ: Agril.,
R/o. Gadipura, Hingoli 4. Balaji S/o. Narayan Sangle,
Age : 31 years, Occ: Agril.,
R/o Polamaroti, Hingoli. 5. Bhagwat S/o Babarao Bangar,
Age : 22 years, Occ. Agril.,
R/o. Mangalwara, Hingoli. 6. Laxman S/o Vilas Nagre,
Age : 34 years, Occ: Agril.,
R/o. Khed, Tq. & Dist. Hingoli | <p>(Resp. Nos. 3,5 and 6 are
dismissed by order
dated 19.04.2021)</p> |
| <p>... PETITIONERS
(Orig. Accused)</p> | |

VERSUS

The State of Maharashtra,
through the Police Inspector,
Hingoli Town Police Station,
Tq. & Dist. Hingoli.

... RESPONDENT
(Orig. Applicant)

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Advocate for Petitioners : Mr. Rajendrra S. Deshmukkh, Senior advocate i/b.
Mr. Vikhe Pratap B.
PP for Respondents/State: Mr. D.R. Kale
Advocate for Assist to PP : Mr. S. S. Rathi

...

CORAM : MANGESH S. PATIL, J.

DATE : 20.07.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioners are impugning the order whereby the regular bail granted to them under the provision of Section 439 (2) of the Code of Criminal Procedure has been cancelled, post a request put up by the

prosecution, to add, in addition to the earlier sections under the Indian Penal Code, the offences punishable under Sections 3 and 4 of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter 'the MCOC Act') after a sanction under Section 21 of the MCOC Act was received.

3. The learned Senior advocate Mr. Deshmukkh would submit that the petitioners were granted a regular bail and in the absence of any supervening circumstance or a breach of terms and conditions subject to which the bail was granted, it could not have been cancelled. He would submit that merely because the provision of the MCOC Act were invoked at a later point of time that would not constitute a supervening circumstance. Liberty ought not have been curtailed in the manner in which it had been done. There are circumstances to indicate that the petitioner is being falsely involved under a serious charge. There is material to *prima facie* demonstrate that the sanctioning authority was perhaps hand-in-gloves with the original informant. A tainted sanction is not a sanction in the eye of law.

4. The learned Senior advocate would further point out that reliance placed by the learned Judge in the decision of **Sarang Arvind Goswamy Vs. State of Maharashtra ; 2005 (3) Mh.L.J. 774** and **Pradip Ram Vs. The State of Jharkhand ; 2019 (17) SCC 326**, is misplaced. Both the decisions can be distinguished on facts. As can be seen, the accused therein, though were granted bail were already in custody in some other crime which is not a fact situation in the matter in hand. The learned Senior advocate would further point out that in the case of **Narendra @ Naresh**

Kavidas Chavan Vs The State of Maharashtra and Anr., ; Criminal WP No.165/2017, this Court in the similar set of facts refused to cancel the bail and the view taken in that be subscribed even in the matter in hand.

5. The learned Prosecutor and the learned advocate Mr. Rathi for the original informant strongly oppose the Writ Petitions and submit that invoking a serious charge at later point of time is indeed a supervening circumstance, the cognizance of which ought to be taken for cancelling the bail. They submit that not only in the case of Sarang A. Goswamy (supra) but in couple of other subsequent decisions, **Vijendra Molchand Kuril Vs. State of Maharashtra ; Criminal Application (APL) No.7/2016** and **Karan Ranjit Paropate Vs. State of Maharashtra and Ors., ; Criminal Writ Petition No.1029/2017**, this Court has taken same stand, referring to the decision in the case of Sarang A. Goswamy. Therefore, there is no illegality in the impugned order which merely follows the decision in the case of Sarang A. Goswamy.

6. The learned Prosecutor and the learned advocate Mr. Rathi would also point out that the decision in the case of Narendra @ Naresh Kavidas Chavan (supra) which is later in point of time does not refer to the earlier decision of this Court in the case of Sarang A. Goswamy and the learned Judge while passing the impugned order has rightly refused to rely upon the former decision.

7. The learned Prosecutor and the learned advocate Mr. Rathi would lastly submit that the decision of the Supreme Court in the case of

Pradip Ram (supra) now sets the controversy at rest. They would point out that in fact, in such a fact situation where some aggravated offences are invoked at later point of time after grant of bail, a relief of cancellation of bail under Section 439 (2) of the Code of Criminal Procedure is not required and only a permission to arrest the accused who has been granted bail is contemplated. The learned advocate would pertinently point out the fact that earlier decision in the case of **Hamida Vs. Rashid ; (2008) 1 SCC 474**, has been referred to wherein it has been specifically observed that after addition of serious non-cognizable offences, the accused who has been granted bail is required to surrender and again apply for bail under the newly added offences. They would therefore submit that though there could be some error in articulating the prayer in the application whereby bail was sought to be cancelled, the procedure being hand maid of justice, the impugned order can be read to mean that what was asked before the learned Judge and what was actually granted was merely a permission to arrest the petitioners.

8. I have carefully considered the rival submissions and the decision cited at the bar. The material facts are not in dispute. The petitioners were arrested when the offences under the Indian Penal Code, Arms Act and the Maharashtra Police Act were invoked. They were granted regular bail. It is thereafter that a sanction was solicited and obtained under Section 21 of the MCOC Act and it is thereafter that the application was filed seeking cancellation of bail, upon which the impugned order was passed.

9. So far as extending an opportunity of being heard before passing of the impugned order, though it is apparent that the learned advocate who was supposed to argue the matter on behalf of the petitioners could not be extended sufficient opportunity of being heard, the impugned order elaborately discusses the events preceding to passing of the impugned order. The learned Judge has laboured to point out as to how several opportunities were extended to petitioner's advocate to make submissions not only physically but even through video conferencing facility but the opportunity was not availed of.

10. Pertinently, simultaneously with the application for cancellation of bail, even the application filed by the petitioners (Exhibit-15) was agreed to be decided. As can be seen from the impugned order, it was with the common understanding that the argument of both the sides were heard on both these applications with a further understanding that if the application (Exhibit-15) by which the petitioners had prayed for making a reference to this Court under Section 395 of the Code of Criminal Procedure was prayed for would be decided first in point of time and if it was to be allowed decision on the application for cancellation of bail would be deferred. It clearly implies that if the application (Exhibit – 15) was to be rejected, this application for cancellation of bail was to be readily decided. It is with this understanding that the parties had allowed the learned Judge to proceed and therefore the petitioners cannot be allowed to make any capital on the ground that they were not extended an opportunity of being heard.

11. Now coming to the merits of the impugned order, the issue in my considered view is no longer *res integra*. The decision in the case of Pradip Ram (supra) clearly settles the controversy. Suffice for the purpose to reproduce the points for determination formulated by the Supreme Court and its decision thereon.

“7. From the submissions of the learned Counsel for the parties and the pleadings on the record, following are the issues, which arise for consideration in these appeals :

(i) Whether in a case where an Accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the Accused in custody ?

29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an Accused, further cognizable and non-cognizable offences are added :

(i) The Accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the Accused can certainly be arrested.

(ii) The investigating agency can seek order from the court Under Section 437 (5) or 439 (2) of Code of Criminal Procedure for arrest of the Accused and his custody.

(iii) The Court, in exercise of power Under Section 437 (5) or 439 (2) of Code of Criminal Procedure, can direct for taking into custody the Accused who has already been granted bail after cancellation of his bail. The Court in exercise of power Under Section 437 (5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an Accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the Accused, but for arresting the Accused on such addition of offence or offences it need to obtain an order to arrest the Accused from the Court which had granted the bail.

30. *The issue No.1 is answered accordingly.”*

12. As can be noticed, it has now been emphatically concluded that after an accused is released on bail and some serious offences are invoked at a later point of time, there is no question of seeking any cancellation of bail and the investigating agency would only be required to apply for permission from the Court which granted the bail to arrest the accused.

13. It is important to note that in the case of Sarang A. Goswamy, Vijendra M. Kuril and Karan R. Paropate (supra), this Court has proceeded to look upon this as supervening circumstance entitling the Court granting the bail to cancel it. Even the learned Judge while passing the impugned order has proceeded on the same line relying upon the decision of Sarang A. Goswamy. But as can be appreciated, in view of the decision in the case of Pradip Ram (supra), cancellation of bail in such a fact situation is not required.

14. True it is that the application on which the impugned order was passed, perhaps in ignorance of the decision in the case of Pradip Ram (supra) proceeded with and decided the request of cancelling the bail and even the learned Judge has accepted the prayer. However, in my considered

view, instead of proceeding on the technicalities, when the law does not require cancellation of bail and merely requires a permission to arrest the accused, the wording of the prayer in this application can be interpreted to mean that what is contemplated in law was in fact sought by the prosecution.

15. Needless to state that the petitioners are not being put to any prejudice merely because the request by the prosecution can now be interpreted within the four corners of the law in the light of the observation in the case of Pradip Ram (*supra*).

16. Considering the above state of affairs, I find no illegality in the impugned order. At the most it can be clarified that it be read as not amounting to cancellation of bail but granting permission to the Investigating Officer to arrest the petitioners.

17. The Writ Petitions are dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)