

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

**APPLICATION FOR CANCELLATION OF BAIL NO. 81 OF 2021
IN
CRIMINAL APPEAL NO. 648 OF 2020**

The State of Maharashtra

...Applicant

Versus

Ashok Suryabhan Vidhate

...Respondent

.....
Mr. S. J. Salgare, APP for applicant / State
Mr. R. R. Karpe, Advocate for respondent
.....

**CORAM : V. K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**

DATE : NOVEMBER 15, 2021

PER COURT : -

1. The applicant – State has filed this application for cancellation of bail granted to the respondent by this Court vide common order dated 04th January, 2021 in Criminal Appeal Nos. 648 of 2020 and 687 of 2020. So far as present application seeking cancellation of bail is concerned, we are dealing with Criminal Appeal No. 648 of 2020 only.

2. This Court (Coram : R. V. Ghuge & B. U. Debadwar, JJ.) by order dated 04th January, 2021 in Criminal Appeal No. 648 of 2020

allowed the appeal and directed that in the event of arrest of the respondent (original accused no. 1) namely, Ashok Suryabhan Vidhate, he shall be released on bail on certain conditions. The respondent – accused was ordered to be released on pre-arrest bail on the following conditions.

- “a) Both shall tender a PR Bond in the sum of Rs. 1 Lakh (Rupees One Lakh Only) each and the solvent surety of the like amount.
- b) Both shall appear before the Station House Officer, CIDCO Police Station, tomorrow i.e. on 05-01-2021 at 01:00 p.m. and surrender their mobile instruments for investigation.
- c) They shall mark their attendance with the CIDCO Police Station on every Tuesday, Thursday and Saturday, between 01:00 p.m. to 03:00 p.m. until the commencement of the trial.
- d) They shall make themselves available, besides appearing on the above mentioned days, on all such days on which they are called upon for investigation.
- e) Both shall not attempt to contact the victim, either directly or indirectly, shall not tamper with the evidence and shall not attempt to contact any such person who could be a witness in this case.”

3. The learned APP submits that the respondent – accused had surrendered two mobile handsets and accordingly Investigating Officer has obtained CDR / SDR of the said mobile handsets. It reveals that the respondent / accused no. 1 intentionally surrendered

the mobile handsets which have been rarely used. The learned APP submits that the respondent / accused has used the handsets of the Samsung Company bearing No. Samsung A750FDS, Vivo 1716, Vivo 1714, Vivo 1723 and Samsung E1200 Pusha (Gt-E1200Y), respectively. However, the respondent – accused has not deposited those handsets before the Investigating Officer. The learned APP submits that those handsets were used for the period 2016 to 2020 i.e. till the registration of the crime on 03.11.2020. The learned APP submits that, as per the call details record (CDR), the respondent-accused has made near about 15687 and 1740 calls by using the Samsung A750FDS. The learned APP submits that, the respondent – accused has not cooperated with the Investigating Agency to carry out the further investigation into the crime by not abiding the conditions imposed by this Hon'ble Court. The learned APP submits that the handsets as referred to above, which have not been surrendered by the respondent – accused before the Investigating Officer, are necessary to find out the involvement of the respondent – accused in the commission of the crime, particularly, the videos and certain details which are available in the memory of the handsets. The learned APP submits that the informant has made certain allegations that the respondent – accused had demanded an amount of Rs. 5.00 lakhs from the informant on 25.10.2020. When the informant

refused to give him the said amount, the respondent – accused has shown her certain videos from his mobile handset to the informant. It is, however, alleged by the informant that by showing the said obscene videos, the respondent – accused had threatened the informant that he will post those videos on social media. The learned APP submits that the respondent – accused deliberately not cooperating with the Investigating Agency and he has intentionally not surrendered the said mobile handset.

4. The learned Counsel for the respondent – accused submits that, in compliance of the directions given by this Court while releasing the respondent – accused on pre-arrest bail, the respondent – accused has surrendered two mobile handsets of the Vivo Company before the Investigating Agency having Idea Sim Card. The learned Counsel submits that the crime came to be registered on 03.11.2020. However, the earlier mobile of Samsung Company as referred to above is the secondhand handset purchased by the respondent – accused from Abdulla Shaikh, R/o. Misarwadi, Tq. & Dist. Aurangabad. The learned Counsel submits that this factual aspect can be verified by the police authorities also by collecting the necessary information in the form of CDR / SDR from the service provider.

5. The learned Counsel for the respondent – accused submits that when the bail is granted, under the very exceptional circumstances the bail can be cancelled. In the instant case, the applicant/State has not come with any specific grounds to cancel the bail granted by this Court to the respondent – accused. The learned Counsel for the respondent has placed reliance on the following cases.

- i] **Dolat Ram and Others Versus State of Haryana**
(1995) 1 SCC 349
- ii] **Sanjay Chandra v. Central Bureau of Investigation**
AIR 2012 SC 830

6. We have carefully gone through the order passed by this Court (Coram : R. V. Ghuge & B. U. Debadwar, JJ.) dated 04.01.2021, particularly, the clause b) of the conditions as elaborated in paragraph no. 9 of the said order. This Court had directed the respondent – accused to appear before the Station House Officer, CIDCO Police Station on 05-01-2021 at 01:00 pm and surrender the mobile instruments for investigation.

7. We have carefully gone through the allegations made in the complaint. The informant had separated from her husband about ten years prior to the registration of the FIR. Respondent / accused used to frequently visit the shopping complex on Naregaon road

where the informant had her own shop. Respondent – accused used to visit the shop of informant. It has been further alleged in the complaint that the respondent – accused has given the false promise to the informant about the company for rest of her life and accordingly, developed sexual relations with her. It has been further alleged in the complaint that the respondent – accused used to take the informant regularly in a similar premises till 25.10.2020, which is a period of about four years and six months, where the respondent – accused repeatedly committed sexual intercourse with the informant under the said false promise. On 25.10.2020, the respondent – accused allegedly demanded Rs. 5.00 lakhs from the informant and when the informant refused to give the said amount, the respondent / accused has shown her the various video clips from his handset about their sexual acts. The respondent – accused has threatened her to make the said videos viral on the social networking sites.

8. This Court (Coram : R. V. Ghuge & B. U. Debadwar, JJ.) has elaborately discussed these factual aspects in paragraph 4 and 5 of the order dated 04.01.2021 and in the backdrop of these factual aspects granted pre-arrest bail to the respondent – accused on certain conditions of which the clause no. b) of paragraph no. 9 is important.

9. We have carefully perused the document at Exh. 'C', which is part and parcel of the investigation papers. It contains the information pertaining to IMEI number, calls, handset detail, used numbers, numbers, used IMSI and IMSI. It appears that so far as mobile handsets of Samsung A750FDS, Vivo 1716, Vivo 1714, Vivo 1723 and Samsung E1200 Pusha (Gt-E1200Y) are concerned, particularly the mobile handset of Samsung A750FDS is frequently used. Near about 15687 and 1740 calls have been made by using the said handset of Samsung A750FDS. We find much substance in the submission advanced by the learned APP for the applicant / State that the respondent / accused has deliberately not surrendered the said mobile handset to the Investigating Agency though directed. The respondent – accused has not complied with the condition imposed upon him i.e. clause b) of paragraph no. 9 of the order dated 04.01.2021 passed by this Court in Criminal Appeal No. 648 of 2020. The respondent – accused has assured the Court to extend the full cooperation to the Investigating Agency and also assured the Court to surrender his mobile handsets allegedly used in the commission of the crime, however, the respondent – accused has not abided by the conditions with some ulterior motive.

10. In the case of Dolat Ram (supra) relied upon by the learned Counsel for respondent – accused, in paragraph no. 4, the Supreme Court has made the following observations.

4. Rejection of 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. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.

11. In the instant case, the respondent-accused has deliberately not cooperated with the Investigating Agency and on the contrary misled the Investigating Agency. The respondent – accused has not surrendered the mobile handsets, wherein, certain

incriminating videos are available in the memory of handsets. Thus, the ratio laid down in the case of Dolat Ram (supra) cannot be made applicable to the facts and circumstances of the present case.

12. In the case of Sanjay Chandra (supra), the Supreme Court has dealt with the issue of detention of the under-trial prisoner in the jail to an indefinite period and in the backdrop of the same, has observed that the bail is the rule and committal to jail an exception. The Supreme Court has made such observation in connection with the applications seeking regular bail. In the instant case, respondent-accused was granted pre-arrest bail on certain conditions which he has violated with some ulterior motive and misled the Investigating Agency.

13. In view of the above, we allow this Criminal Application in terms of prayer clause 'B' of this application. Application for Cancellation of Bail stands disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

[V. K. JADHAV]
JUDGE