

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.3031 OF 2021**  
**WITH**  
**INTERIM APPLICATION NO.2218 OF 2021**

Rohan Sunil Abbott ... Petitioner  
Vs  
The State of Maharashtra ... Respondents  
...

Mr. Aniesh S. Jadhav with Mr. Veerdhawal Deshmukh  
with Ms. Kausar Banatwala with Mr. Rushikesh Kekane  
for the Petitioner.

Smt. Sharmila Kaushik, APP for the Respondent-State.

Ms. Abha Singh with Mr. Tanmay Bidkar with Ms. Isha  
Singh for Intervenor in IA 2218/2021.

PI Mr. Anjum Bagwan APMC Police Station Navi Mumbai.

**CORAM : SANDEEP K. SHINDE J.**  
**DATE : NOVEMBER 15, 2021.**

**JUDGMENT :**

**Rule.** Rule made returnable forthwith. With  
consent of the parties, matter is taken up for final  
hearing.

2 Heard Mr. Aniesh Jadhav learned counsel for  
the petitioner, Ms. Kaushik, learned Prosecutor for the

State and Ms. Abha Singh, learned counsel for the Intervenor.

3           Hon'ble Apex Court in the case of **Pradip RaM v. State of Jharkhand (2019) 17 SCC 326** has held that "where the accused is bailed out under orders of the Court and new offences are added including the offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences. The Powers under Sections 437(5) and 439(2) are wide powers granted to the Courts by the legislature under which Court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to the earlier offences."

.           In paragraph 31 the Hon'ble Apex Court has further held that

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

*(ii) The Investigating agency can seek order from the Court under Section 437(5) or 439(2) Cr.P.C. for arrest of the accused and his custody;*

*(iii) The Court, in exercise of power under Section 437(5) or 439(2) Code of Criminal Procedure, 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail.*

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

4 In the case in hand, the petitioner is accused in First Information Report No.43 of 2021 registered by APMC Police Station, Vashi on 7<sup>th</sup> February, 2021 under Section 304(A), 279, 337, 338 and 427 of the Indian Penal Code, 1860 ('IPC' for short) read with Section 184, 134(A)(B) of the Motor Vehicles Act, 1988. All these offences were bailable and, therefore, petitioner was released on bail under Section 436 of the Code of

Criminal Procedure, 1973 ("Cr.P.C. for short) by the learned Judicial Magistrate, First Class on 8<sup>th</sup> February, 2021 on bail bond of Rs.15,000/-.

5           On 13<sup>th</sup> February, 2021, respondent-State moved an application before the learned Judicial Magistrate, First Class, informing addition of offence under Section 304-II of the Indian Penal Code, 1860 and Section 65(A) of the Prohibition Act. The newly added offence, under Section 304-II is non-bailable and triable by the Court of Sessions. Thereafter respondent moved an application on 22<sup>nd</sup> February, 2021 before the learned Judicial Magistrate, First Class seeking cancellation of bail granted to the petitioner under Section 436 of the Code of Criminal Procedure, 1973.

6           The learned Judicial Magistrate, First Class vide order dated 26<sup>th</sup> March, 2021 declined to cancel the bail and also declined police custody of the

applicant, as sought by the Investigating Officer. The operative part of the order reads as under:

*“1. The cancellation of bail and police custody application filed by I.O. is hereby rejected.*

*2. The accused is directed to surrender before this Court within 10 days from the date of this order and apply for bail for newly added cognizable and non-bailable offences.*

*3 On failure to surrender before this Court within specified time. I.O. shall be at liberty to seek arrest of accused.”*

7           Feeling aggrieved by the order dated 26<sup>th</sup> March, 2021, petitioner has approached this Court under Article 227 of the Constitution of India, inter-alia, contending that the prosecution could not have filed an application under Section 437(5) of the Cr.P.C. and further Court had no jurisdiction to entertain the application since the petitioner was granted bail under Section 436 of the Cr.P.C. Contention is that since petitioner has been granted bail under Section 436, the application under Section 437(5) was not maintainable,

in-as-much as Section 437(5) provides that, any Court which has released a person on bail under Sub-section (1) or (2) of Section 437 itself may direct that such person be arrested and committed him to custody. It is, therefore, argued that since the petitioner was granted bail under Section 436, the learned Judicial Magistrate, First Class had not acquired jurisdiction under Section 437(5) to entertain the application and, therefore, the impugned order directing the petitioner to surrender before the Court within ten days and apply for the bail in newly added cognizable offence was without jurisdiction.

8           The learned counsel for the petitioner in support of the submissions, relied on following judgments:

**(1) Bindeshwari Prasad Singh V. Kali Singh  
(1977) 1 Supreme Court Cases 57**

- (2) Basir and Ors. v. State of Haryana  
(1977) 4 SCC 410**
- (3) Maj. Genl. A.S.Gauraya and Another v.  
S.N.Thakur and Anr. (1986) 2 SCC 709**
- (4) Aslam B. Desai v. State of Maharashtra  
(1992) 4 SCC 272**
- (5) P.K.Shaji Alias Thammanam Shaji v.  
State of Kerala (2005) 13 SCC 283**
- (6) Pandit D. Khot v. State of Maharashtra  
and Ors. (2008) 17 SCC 745**
- (7) Jayant Verma and Ors v. Union of India  
and Ors. (2018) 4 SCC 743**
- (8) Pradeep Ram V. State of Jharkhand and  
Anr. (2019) 17 SCC 326.**

9           The learned Prosecutor and intervenor supported the impugned order.

10           Petitioner is right in contending that, since the petitioner has been granted bail under Section 436 of the Cr.P.C., prosecution could not have moved an application under Section 437(5) of the Cr.P.C. However, the fact remains, the learned Magistrate has not cancelled the bail. Factually speaking, the learned Magistrate, did not exercise jurisdiction under Section 437(5) but by relying on the judgment of the Hon'ble Apex Court in the case of **Pradip Ram (Supra)** suggested applicant to apply for the bail in the newly added cognizable and non-bailable offence. Obviously, condition (2) of the operative order was based on the judgment of the Apex Court in the Case of **Pradip Ram (Supra)** wherein the Apex Court has summarised the law in paragraph 31 relating to the issue in question. Therefore, directions contained in Clause (2) of the operative order cannot be faulted with. In so far as the Clause (3) of the operative order, is concerned, the

permission to arrest was granted pursuant to the application/intimation dated 13<sup>th</sup> February, 2021 and not in application dated 22<sup>nd</sup> February, 2021 preferred by the prosecution, seeking cancellation of petitioner's bail.

11 In consideration of the facts of the case and for the reasons stated above, order impugned requires no interference.

12 Rule is discharged. Petition is dismissed and disposed off.

13 Since the petition itself is disposed off, nothing survives in the interim application therein and same is also disposed off.

**(SANDEEP K. SHINDE, J.)**

14           To enable the petitioner to challenge this order, the interim relief granted on 5<sup>th</sup> April, 2021 shall continue to operate for a period of three weeks.

**(SANDEEP K. SHINDE, J.)**