

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

**CRIMINAL APPLICATION NO.340 OF 2018
WITH
CRIMINAL APPLICATION NO.677 OF 2017**

Fareed Ahmed Qureshi

...Applicant

Versus

Haji Asgar Qureshi and Ors.

...Respondents

....

Mr. Nilesh C. Ojha with Mr. Mangesh Dongre and Mr. Abhishek Mishra
for the Applicant.

Mr. Nitin Sejpal with Mrs. Poojs Sejpal and Ms. Akshata Desai for
Respondent Nos.1 to 6.

Mr. P.H. Gaikwad, APP for Respondent No.7-State.

Mr. N.K. Ghadge, PSI, Mahim police station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 25th OCTOBER, 2021.

P.C.:-

. The Applicant herein has filed these applications under
Section 439(2) of the Code of Criminal Procedure, 1973, for cancellation
of pre-arrest bail granted to Respondent Nos. 1 to 6 vide order dated
23/11/2017 passed by the learned Additional Sessions Judge, Greater
Bombay, in Anticipatory Bail Application No.1816 of 2017.

2. Mr. Nilesh Ojha, learned counsel for the Applicant states that
the bail was obtained by making false statement and this itself is a
sufficient ground for cancellation of bail. He further states that the

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Applicant had filed application under Section 340 of the Cr.P.C. for initiating action against the Respondent Nos.1 to 6 for making misleading statements. He states that judgment of the Apex Court in Criminal Appeal No.387 of 2019 is per incuriam. He has relied upon the decision of the Apex Court in ***P.C. Purushothama Reddiar vs. S. Perumal, 1972 (1) SCC 9.***

3. Mr. Sejpal, learned counsel for Respondent Nos.1 to 6 states that original accused No.1, son-in-law of the complainant was declined bail and that this Court had held that prima facie case was made out for perjury under Section 340 of the Cr.P.C. Said order has been set aside by the Apex Court and original accused No.1 has been subsequently granted regular bail. It is stated that charge sheet has been filed and that next date of hearing is 08/11/2021. Learned counsel for the Respondents as well as learned APP states that Respondent Nos.1 to 6 have not misused the liberty.

4. Perused the records and considered the submissions advanced by learned counsel for the respective parties.

5. In ***Myakala Dharmarajam and Ors. vs. The State of Telangana and Anr. (2020) 2 SCC 743***, the Apex Court has observed

thus:-

6. *The factors to be considered while granting bail have been held 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, 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 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.*
7. *In Raghubir Singh v. State of Bihar this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above*

grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8. *It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."*

6. In the instant case, the records reveal that there is marital dispute between accused No.1 and the daughter of the complainant. The Respondent Nos.1 to 6 are the family members of the accused no.1. The Applicant, who is father-in-law of accused No.1 had lodged a FIR alleging that accused No.1 had forcible sexual intercourse with his daughter against her wish and had compelled her for unnatural sex. Allegations of demand of dowry and cruelty are also levelled against Respondent Nos.1 to 6. Pursuant to the said complaint, Crime No.346 of 2017 was registered with Mahim Police Station, Mumbai, against Respondent Nos.1 to 6 and accused no.1, the son-in-law of the

Applicant for the offences punishable under Sections 323, 376(B), 377, 406, 498-A, 504 and 506 r/w 34 of the IPC and Sections 3 and 4 of Dowry Prohibition Act.

7. Learned Judge while granting the bail has taken note of the fact that there is matrimonial dispute between the daughter of the Applicant and her husband. Learned Judge has also observed that both the parties had made allegations and counter allegations against each other and there were settlement talks in respect of divorce and return of property. Considering the nature of accusations against these Respondents, learned Judge granted pre-arrest bail to these Respondents. The learned Judge rejected the application for bail filed by accused No.1, son-in-law of the Applicant mainly in view of allegations of rape and unnatural sex, constituting offences punishable under sections 376(b) and 377 of IPC.

8. The order of pre-arrest bail in favour of these Respondents, are not erroneous or perverse. It is stated that the charge sheet has already been filed. Learned APP further states that these Respondents have not violated the terms and conditions of the bail. Bail cannot be cancelled on a bare statement that the order is obtained by making a false statement when prima facie there is no material to indicate that

the statements made by the Respondents in bail application are false, made with deliberate intention of procuring the bail order by misguiding the Court. Hence, no grounds are made out for cancellation of bail.

9. As regards Application under section 340 Cr.P.C., it is also pertinent to note that the Applicant had filed similar application alleging that accused no.1 had made false statements in the Application for pre-arrest bail. This Court had held that prima facie case was made out for perjury under Section 340 of the Cr.P.C. and that it would be expedient in the interest of justice to prosecute the accused No.1 – Aarish Asgar Qureshi. Said order dated 07/03/2018 has been set aside by the Hon'ble Supreme Court in Criminal Appeal No.387 of 2019. The Hon'ble Supreme Court after considering the law on the subject has held as under:-

“ 10. It is clear therefore from a reading of these judgments that there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been

led. Moreover, the report dated 12.11.2011 being a report, which is in the nature of a preliminary investigation report by the investigating officer filed only two days after the F.I.R. is lodged, can in no circumstances be regarded as unimpeachable evidence contrary to the statements that have been made in the anticipatory bail application. Further, as has been correctly pointed out by learned counsel appearing on behalf of the appellant, that though the submission recorded by the High Court in para 3 of the order dated 30.11.2017 is from the aforesaid paragraph in the anticipatory bail application, yet, the High court made it clear that it was granting anticipatory bail principally because the F.I.R. annexed to the bail application does not show that there was sexual intercourse of the applicant with his wife during the course of their separation as a result of which it was not possible to assess whether the averment regarding the offence punishable under Section 377 of the I.P.C. is or is not substantiated. The High Court also recorded that considering that the husband and wife had resided together after marriage only for a very brief period, and that the husband was granted interim anticipatory bail, decided to grant final anticipatory bail on these grounds. It is clear, therefore, that both the grounds stated by the High Court would not suffice to initiate prosecution under Section 340 read with Section 195 (1) (b) of the Cr.P.C.”

10. In the light of the decision of the Apex Court in ***Aarish Asgar Qureshi v/s. Fareed Ahmed Qureshi and anr. in Criminal Appeal No.387 of 2019***, no proceedings can be initiated against these respondents under Section 340 of the Cr.P.C. The decision in ***P.C. Purushothama Reddiar*** (supra), has no application and reliance on this judgment is totally misplaced. Under the circumstances, the Applications have no merits and are accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)