

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

**CRIMINAL APPLICATION NO. 626 OF 2015
WITH
CRIMINAL APPLICATION NO. 847/2015
IN
CRIMINAL APPLICATION NO. 626 OF 2015**

Girish Kumar Karamsibhai Bodhra Applicant
v/s.
Prakash Govind Pawar and anr. Respondents

Mr. Subhash Jha i/b. Law Global Advocates for the Applicant.
Mr. Prashant G. Pandey for Respondent No.1.
Mrs. G.P. Mulekar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th JULY, 2021.

P. C. :-

. This is an Application filed under Section 439(2) of Cr.P.C. for cancellation of bail granted to Respondent No.2 by the learned Sessions Judge, Dindoshi vide order dated 15/09/2015 in Bail Application No.410 of 2015.

2. Heard Mr. Subhash Jha, learned counsel for the Applicants , Ms. G.P. Mulekar, learned APP for the State and Mr. Prashant Pandey, learned counsel for Respondent No.1. I have perused the records and

considered the submissions advanced by the learned counsels for the respective parties.

3. It is well settled that parameters for grant of bail are entirely different from cancellation of bail. In ***Myakala Dharmarajam and ors. v/s. 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 Raghur 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 canceling the bail. ”

4. In the instant case, the Applicants have sought cancellation of bail primarily on the ground that the earlier Application having been rejected, there is no change in circumstance to justify grant of bail. Mr. Jha further submits that Respondent No.1 had suppressed filing of the Bail Application before this Court. It is also contended that a crime has been registered against the Applicant for an offence committed after

grant of bail. Mr. Jha contends that the bail is liable to be cancelled for misuse of the bail.

5. It is pertinent to note that the Applicant had lodged the FIR with Bangur Nagar Police Station pursuant to which C.R.No.221/2015 was registered against the Respondent No.2 and the co-accused – Rati Krushna Pattanayak for offences under Sections 465, 467, 468, 479, 420, 506(II) and 34 of the Indian Penal Code. The Applicant/first informant has alleged that he had entered into an Agreement/MoU with the co-accused Rati Krushna Pattanayak whereunder he agreed to purchase premises each admeasuring 670 sq.ft on the ground floor and on the mezzanine floor, bearing Census No.PWXC 38/1/1A constructed on the land bearing Survey No.161 corresponding to CTS No.1 situated at Pahadi, Goregaon for price of Rs.1,50,00,000/- and it was put he was put in possession of the premises upon payment of Rs.3,50,00,000/- respectively. The Applicant claims that payment of Rs.3,51,00,000/- was made from total sale consideration of Rs.5,00,00,000/-.

6. The grievance of the Applicants was that despite receive part

consideration and despite handing over the premises, the said Rati Krushna Pattanayak entered into a similar agreement with one Girish Dube. The Applicant has stated that since he was in Dubai, his friend Anant Jayantibhai Patel was looking after the renovation work of the premises. The Applicant alleged that on 07/04/2015, the Respondent No.2 called Anant Patel to his office and demanded an amount of Rs.2,00,00,000/- under a threat to kill. The Applicant claims that Respondent No.2 had also told Anant Patel that he is a member of a gang headed by Arun Gavali. The Applicant was subsequently informed that by Anant Patel some hooligans had taken possession of the premises. In the supplementary statement, the Applicant has stated that he later learnt that Rati Krushna Pattanayak had sold the suit premises to one Anil Gaikwad in the year 2013 and that he had also entered into a similar transaction with Khalil Abdulha on the basis of false/forged documents. The Applicant therefore lodged a complaint against Rati Krushna Pattanayak for cheating and for engaging Respondent No.2 to threaten to cause his death.

7. The Respondent No.2 came to be arrested in the said crime on 22/07/2015. Bail Application No.338/2015 filed by the Respondent No.2 was rejected by the Sessions Court, Dindoshi by order dated

10/08/2015. The Respondent No.2 thereafter filed Bail Application No.1628/2015 before this Court which was withdrawn on 09/09/2015 with liberty to file a fresh Application before the Sessions Court in view of change in circumstance. The Respondent No.1 thereafter filed the 2nd Bail Application No.410/2015 before the Sessions Court, Dindoshi. A perusal of the Bail Application No.410/2015 clearly reveals that the Respondent No.2 had disclosed that he had filed an Application for Bail before this court and that the same was withdrawn with liberty to file fresh Application. There is thus no suppression of material fact.

8. It is to be noted that subsequent to the dismissal of previous bail application, the main accused – Rati Krushna Pattanayak had been granted bail in view of amicable settlement with the Applicant. In view of these subsequent events, the Respondent No.2 filed the 2nd Application claiming bail on the ground of parity. The main accused having been granted bail, the learned Judge granted bail to the Applicant who was acting only on behalf of the co-accused Rati Krushna Pattanayak.

9. The averments in the FIR prima facie reveals that the Applicant was engaged by Rati Krushna Pattanayak and that he

had demanded money and given threats at the behest of Rati Krushna Pattanayak. The main accused Rati Krushna Pattanayak having been granted bail, in view of settlement, the learned Judge has not committed any manifest error in granting bail to the Respondent on the ground of parity. Hence, the order is neither perverse nor suffers from infirmity.

10. The allegations of misuse of the bail is devoid of merits as the records reveal that civil litigation is pending between the Applicant and Rati Krushna Pattanayak. Crimes registered against the Applicant are in respect of the same transaction wherein he is already enlarged on bail. The allegations of threat is nothing but an attempt to nullify the order of bail. Under the circumstances, the Application is devoid of merits and is accordingly dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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