

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

CRIMINAL APPLICATION NO. 655 OF 2014

Floyd Francis Mariano Gracias ... Applicant

Versus

1. Bhikamchand Bhavarlal Sisodiya
2. State of Maharashtra ... Respondents

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Mr. Mubin Solkar i/by Ms. Tahera A. R. Qureshi, Advocate for the Applicant.

Mr. S. V. Marwadi i/by Mr. S. S. Redekar Advocate for Respondent- No.1.

Mr. R. M. Pethe, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th JULY, 2021.

PER COURT:

1. The applicant is seeking cancellation of bail granted to respondent No.1 vide order dated 17th October, 2014 passed by the learned Additional Chief Metropolitan Magistrate, 66th Court at Andheri, Mumbai.

2. This application was preferred by the original complainant, who had lodged the First Information Report (for short 'FIR') dated 12th March, 2012 vide C.R. No.100 of 2012 with Pawai Police Station, Mumbai for offences under Sections 420, 465,

466, 467, 468 & 471 r/w Section 34 of Indian Penal Code (for short “IPC”). During the pendency of this application, the original applicant/complainant had expired and hence interim application No.1073 of 2021 was preferred seeking leave to amend the original application to implead the applicant in interim application as applicant in place of his deceased father. The interim application was allowed by order dated 23rd March, 2021 and the present applicant, who is the son of original complainant was permitted to implead himself as the applicant.

3. The prosecution case in short is as follows :

a) Property bearing C.T.S. No. 308, Survey No.18, Hissa No.1 at old Military Road, Marol, Andheri, (East), Mumbai is the ancestral property of the complainant. The name of the family members viz. Lucy Gracias, Philomena Gracias, Charles Gracias, Cecilia Gracias, Felix Gracias, Beatrise Gracias, Federick Gracias were reflected on 7/12 extract and property card.

b) With consent of all the parties, the development agreement was executed with Nishar Porbandarwala and Akbarali Porbandarwala. General Power of Attorney was executed on 19th February, 1985. Lucy Gracias has expired on 10th November, 1991 and Philomena Gracias had expired on 20th February, 2000. Cecilia

Gracias is resident of Spain since 1972. She had given Power of Attorney relating to the said property to Beatrise Gracias.

c) Sale Deed dated 27th February, 1978 was prepared by Mohammad Siraj which reflects the signatures of the family members of complainant. The signatures are false. It is a fabricated sale deed.

d) Power of Attorney was prepared in the name of Patiram Yadav on 24th March, 1988. It is not signed by any family members of the complainant. They do not know Patiram Yadav.

e) On 20th October, 2011 deed of confirmation was prepared in the name of Patiram Yadav. The said deed of confirmation was purportedly signed by the witnesses, who are not known to the family members of complainant.

f) In the past Mohammad Siraj had prepared documents relating to the said property and the offences were registered against him in 2003 with Pawai Police Station vide C.R. No. 224 of 2003 under Sections 420, 465, 466, 468, 471 r/w Section 34 of IPC. He was arrested in the said case and the said proceedings are pending in the Court.

g) Sisodiya Bhikamchand Bhavarlal, Shankar Jagannath

Mishra, Bajrang Wadarge and Michael Colaco had prepared deed of conveyance dated 8th March, 2011 in respect to the aforesaid property. The said deed of conveyance is not signed by any family members of the complainant and it is fabricated. The witnesses who have signed the said documents are not known to the any of the family members of the complainant. Although, Lucy Gracias and Philomena Gracias had expired on 10th November, 1999 and 20th February, 2000, Sisodiya Bhikamchand Bhavarlal Shankar Mishra, Bajrang Vadarge and Michael Colaco had prepared deed of conveyance dated 8th March, 2011. The signatures of Lucy and Philomena are appearing on the said deed which are forged. Documents submitted for preparing deed of conveyance such as pan card, photographs and signatures are false.

h) Indemnity bond was prepared on 18th August, 2011 before the Notary and the advocate, who are not known to the complainant and his family members. They have not appeared before the Notary. Sisodiya Bhikamchand Bhavarlal had published notice in the newspapers which was not to the knowledge of the complainant and others. Hence, they did not respond to the said notice.

i) Jawed Ali Mohammad Siraj has submitted documents

claiming right in the said property. The complainant obtained the photo copies of the documents submitted by the accused from the office of Talathi and on verification it was found that they are false. Thus, all the five persons had prepared false documents in relation to the property of complainant and his family and cheated them.

4. The respondent No.1 had initially preferred an application for anticipatory bail before the Sessions Court and thereafter before this Court. Those applications were rejected. The respondent No.1 was arrested in C.R. No. 263 of 2013 on 29th August, 2013. He was arrested in the present case on 6th September, 2013.

5. The respondent No.1 preferred an application for bail before the Court of Sessions which was rejected by order dated 11th March, 2014. The respondent No.1 thereafter, preferred an application for bail before this Court. By order dated 15th September, 2014, the said application was allowed to be withdrawn with liberty to move application before Court of Metropolitan Magistrate seeking relief to grant of bail. Thereafter, the respondent No.1 preferred an application for bail before the Court of learned Metropolitan Magistrate. Vide order dated 17th October, 2014, the learned Metropolitan Magistrate - 66th Court, Andheri, Mumbai,

allowed the application for bail by directing that the accused is released on executing PR. bond in the sum of Rs.1,00,000/- and in the like amount of one or more solvent surety, on condition that, accused shall furnish detail address proof. The accused shall not leave the jurisdiction of Court or Thane District, where he is residing, without prior permission of Court. Accused shall submit passport with Pawai Police Station till further orders and Investigating officer to inform the Court accordingly. The accused shall give his address, if any change in it. Accused shall not give any inducement threats to prosecution witnesses during trial.

6. The applicant has challenged the aforesaid order granting bail to respondent No.1 on several grounds which can summarized as under :-

- i) The learned Magistrate has committed an error to grant bail to respondent No.1.
- ii) The order dated 24th July, 2013 passed by this Court in the application for anticipatory bail, refers to the conduct of respondent No.1 wherein this Court directed the investigating officer to investigate into the matter further to contradict the version of respondent No.1. Subsequently, the respondent No.1 was arrested. He preferred an application for bail before

the Sessions Court which was rejected by order dated 11th March, 2014. The respondent No.1 then preferred application for bail before this Court which was withdrawn. The application for bail was preferred before the Court of learned Magistrate by making misleading statements. The order of learned Magistrate indicate that the submission was advanced by respondent No.1 that High Court was pleased to allow withdrawal of application for bail on the ground of completion of investigation and filing of charge-sheet against accused. The learned Magistrate failed to consider that, the Sessions Court had rejected the application for bail on merits and the High Court did not grant bail to respondent No.1.

iii) There were criminal antecedents against respondent No.1 and he was not entitled for bail. He was involved in similar cases in the past. He was not entitled for bail on the ground of parity.

iv) The offence is of serious nature. Respondent No.1 was involved in fabricating documents. He has played prime role. The Court failed to take note of the gravity of the offence. There was sufficient material showing involvement of respondent No.1 in the offence. False documents were

prepared by respondent No.1 and other accused. Although, some of the family members of the complainant had expired and one of them was abroad since many years, they were shown to have executed documents after their death. They had purportedly executed the fabricated documents. Some persons have acted as witnesses. They were not known to any of the family members of the complainant.

v) Learned counsel for the applicant had relied upon the compilation of documents and the statements recorded during the course of investigation. It is submitted that statements of witnesses shows the complicity of respondent No. 1.

vi) The respondent No.1 was absconding. Although FIR was registered on 12th March, 2012, he was arrested on 6th September, 2013. The applicant/complainant had opposed the application for bail before this Court by filing reply. It is apparent that the Court has not granted bail to the respondent No.1. The respondent No.1 is habitual criminal. Various offences were registered against him at different police stations. The prosecution had filed report before trial Court for further investigation on 16th September, 2014 in accordance with Section Section 173(8) of Cr.P.C.

vii) The order of bail was erroneous. The Court has ignored the merits of the case. Relevant material against respondent No.1 was overlooked. The law laid down by Apex Court in several decisions makes it clear that such order can be set aside by cancelling bail.

viii) In support of the submissions of learned counsel for the applicant relied upon the following decisions.

a) Kanwar Singh Meena Vs. State of Rajasthan and Another, (2012) All MR (Cri.) 4074 (SC)

b) Gulabrao Baburao Deokar V/s. State of Maharashtra & Ors. (2013) 16 SCC 190.

c) Ash Mohammad V/s. Shiv Raj Singh Alias Lalla Babu and Anr. (2012), 9 SCC 466.

d) Narendra K. Amin V/s. State of Gujrat & Anr. (2008) 13 SCC 584.

7. Learned counsel for respondent No.1 submitted that the application for cancellation of bail is not maintainable before this Court. The respondent No.1 was granted bail by the Court of learned Magistrate. The application for cancellation of bail ought to have been preferred before the Sessions Court and not this Court. The respondent No.1 has filed reply with preliminary objection regarding maintainability of this application before this Court. All

the accused, who had signed the forged documents are on bail. The role of respondent No.1 is similar to the other accused, who are granted bail. Trial has not commenced. The respondent No.1 has not misused the facility of bail. The impugned order was passed on 17th October, 2014. Since then, the order of bail is in operation. The respondent No.1 was in custody for a period of 13 months. The counsel of the applicant relied upon all the statements of the co-accused which are not admissible in evidence. Investigation is completed and the charge-sheet is filed. No case for re-arresting the respondent No.1 and sending him to custody is made out. The order passed by this Court granting liberty to respondent No.1 to prefer application for bail before learned Magistrate is misread by the applicant. The impugned order is within the parameters of law. The learned Magistrate had heard the prosecution while granting bail. The Court had assigned reasons for grant of bail which does not call for interference. The respondent No.1 has filed reply opposing this application. The case of prosecution is that Javed Ali Siraj Azmi had prepared first conveyance in 2003 with accused No.7 Patiram Yadav. This Court has granted bail to Javed Ali. It is alleged that by virtue of conveyance, the respondent No.1 and co-accused Bajrang Vadarge, Shankar Mishra and Michael Colaco are co-owners of the property. The role attributed to all accused is

similar. Michael Colaco was granted anticipatory bail and other accused were granted regular bail by Court of Magistrate. Co-accused Dinesh Sharma was granted bail. The applicant has filed Civil Suit seeking declaration that Agreement and Conveyance Deed is null and void. While the application for bail was withdrawn before this Court complainant was represented by Advocate. He had knowledge that respondent No.1 was permitted to move application before Court of learned Magistrate. Report dated 16th September, 2014 does not show that further investigation under Section 173(8) of Cr.P.C. was directed. The report indicate that, finger prints of Gracias family and hard disk in the form of CD are sent to expert and the report was awaited. Enquiry is to be made regarding disputed documents. No such effort was made in the entire charge-sheet. The respondent No.1 has been falsely implicated in other cases. He was in custody in the present case for substantial period. He relied upon the decisions of Apex Court in the case of **Mayakala Dharmarajam & Ors. ETC. V/s. State of Telangana and Anr.** dated 7th January, 2020.

8. Learned counsel for applicant submitted that, preliminary objection about maintainability was dealt with. This Court did not direct that application is not maintainable. It is

pertinent to note that this application is pending in this Court since 2014. It has not been relegated to Sessions Court. Assuming that the complainant could have preferred such application before Sessions Court, at this stage this application need not be sent to Sessions Court.

9. Having heard both the sides and perusal of the documents on records including the FIR it can be discerned that the offence relates to the property belonging to the complainant and his family members. The gravamen of the charge against the accused is that the ancestral property of the complainant and others were tried to be grabbed by the accused by fabricating documents. Learned APP has submitted that charge-sheet is filed against accused. Case is pending before concerned Court.

10. It is pertinent to note that the respondent No.1 had preferred application for bail before this Court. The said application was allowed to be withdrawn vide order dated 15th September, 2014. The respondent however sought liberty to move before Metropolitan Magistrate seeking relief to grant bail. The order mentions that the liberty as prayed for is granted in the interest of justice. The learned Magistrate was requested to hear the application and decide the same on its own merits. From the tenor

of the said order it is apparent that the applicant was permitted to prefer application for bail before the Magistrate and the Court was requested to hear the applicant and decide the same on merits. Thereafter, the applicant preferred an application for bail before the learned Magistrate. On 16th October, 2014, the learned Magistrate directed to file say. Learned APP noted his say in writing on the application itself on 16th October, 2014. It was stated that offence is serious in nature. Charge-sheet has been filed by Investigating Officer. On perusal of the statements of witnesses prima facie case is made out against accused. The previous application was already rejected. If accused is released on bail there are chances that he would repeat similar type of offence and abscond. The order dated 17th October, 2014 passed by the Metropolitan Magistrate - 66th Court, at Andheri, Mumbai granting bail to respondent No.1 refers to the fact that several grounds were urged to release the accused on bail. The grounds are reproduced in the order. The application was opposed by learned APP. The submission of learned APP also recorded in the said order. The learned Magistrate observed that it is a matter of record that Pawai Police have filed Supplementary Charge-sheet against the accused on 3rd December, 2013. The trial has not been initiated. Charges levelled against the accused under Sections 465, 467, 468, 471 r/w Section 34 of IPC which are triable

by the Court of Magistrate. The accused is behind bar since last 13 months without trial. The respondent No.1 was released on bail on executing P.R. bond in the sum of Rs.1,00,000/- and one or more solvent sureties in the like amount. He was directed to furnish detail address proof. He was restrained from leaving jurisdiction of the Court or Thane District without prior permission of the Court. He was directed to submit his passport with Pawai Police Station till further order and to give his address, if any change in it. He was restrained from giving any inducement threats to prosecution witnesses during the trial. The respondent No.1 is on bail since 17th October, 2014. It is not alleged that there was breach of conditions of bail. Even on merits no case is made out to cancel bail granted to respondent No.1.

11. Thus, the learned Magistrate had applied mind to the factual aspects and also considered the fact that for 13 months, the respondent/accused was in custody. It is also pertinent to note that the co-accused Rakesh Sakharam Bhamble was granted bail by the learned Magistrate vide order dated 15th June, 2012. Accused Shankar Mishra, Dinesh Sharma and Bajrang Vadarge were granted bail by the Court of Metropolitan Magistrate, Andheri, Mumbai by order dated 21st May, 2012. Accused Javedali Mohmed Siraj Azmi

was granted bail by the High Court vide order dated 10th October, 2012. Accused Michael Dominic Colaco was granted anticipatory bail by order dated 10th May, 2012.

12. Learned Advocate for the applicant has relied upon the precedents in support of prayer for cancellation of bail. In the case of **Kanwar Singh Meena Vs. State of Rajasthan and Another** (Supra), the Apex Court had cancelled bail on the ground that the Court below had ignored the relevant material. It was also observed that cancellation of bail is serious matter. Bail once granted can be cancelled only in the circumstances and for the reasons which have been clearly stated by this Court in catena of Judgment. Reference was made to the previous decisions of the Apex Court in the case of **Gurucharan Singh and Others etc. V/s. State (Delhi Administration)**, 1978 1 SCC 118, **Puran V/s. Rambilas and another**, (2001) 6 SCC 338, **Dolat Ram V/s. State of Haryana** (1995) 1 SCC 349. In the case of **Gulabrao Baburao Deokar V/s. State of Maharashtra & Ors.** (Supra) it was observed that the High Court does have the power under Section 439(2) to set aside unjustified, illegal or perverse order granting bail which is an independent ground for cancellation as against ground of accused misconducting himself. The Court also made reference to Section

439(1) and observed that the notice of bail application to Public Prosecutor implies proper and full opportunity to Public Prosecutor to point out as to why bail should not be granted. The bail granted to the accused in the said case was sought to be cancelled on the ground that the order of the lower Court was perverse and the material on record indicated that the accused had attempted to pressurize witnesses and Investigating Officer. In the case of **Ash Mohammad V/s. Shiv Raj Singh Alias Lalla Babu and Anr.** (Supra) it was observed that the Court has to consider nature of crime, totality of circumstance and criminal antecedents of accused. The Court granting bail the only considered the period of custody. It was further observed that the sacrosanctity of liberty is paramount. However concept of liberty is not in realm of absolutism but restricted one. Socital interest has to be kept in mind. In the case of **Narendra K. Amin V/s. State of Gujrat & Anr.** (Supra) it was observed the parameters for grant of and cancellation of bail are different. The Court dealing with cancellation application is required to find whether irrelevant material of substantial nature was taken into account or relevant material omitted from consideration, while granting bail. The Court should avoid re-appreciation of evidence. In the decision relied upon by the learned counsel for the respondent -1 in the case of **Mayakala**

Dharmarajam & Ors. ETC. V/s. State of Telangana and Anr. (Supra)

the Apex Court had observed that the scope of power to be exercised in the matter of cancellation of bail requires that it is necessary to examine whether the order granting bail is perverse and suffers from infirmities which which has resulted in the miscarriage of justice. No doubt the Court while granting bail in the said case did not discuss the material on record in detail but there is indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case that irrelevant considerations have been taken into account by the Sessions Court while granting bail. The bail order cannot be termed as perverse as the Court was conscious of the fact that the investigation was completed and there was no likelihood of the accused tampering with the evidence. The Court observed that the High Court was not right in cancelling the bail granted to the accused. The order of the Sessions Court granting bail cannot be termed as perverse.

13. Considering the legal principles, factual aspects and the material on record it cannot be termed that the order of the learned Magistrate was perverse or illegal. There is no reason to set aside the said order. Hence, the application deserves to be rejected.

14. Hence, I pass the following order :-

ORDER

Criminal Application No.655 of 2014 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)