

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

CRIMINAL WRIT PETITION NO.979 OF 2022

Ravindra s/o Mansingh Jadhav,
age 26 years, Occ. Labour,
R/o Girnar Tanda,
Tq. & Dist. Aurangabad. ... Petitioner

Versus

The State of Maharashtra,
through its PI Chikalthana
Police Station, Aurangabad. ..Respondent

...

Mr. A D Ostwal h/f K.D.Jadhav advocate for petitioner
Mr. S P Deshmukh, APP for the Respondent/State

...

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 03.08.2022
Pronounced on : 20.08.2022

JUDGMENT :-

1. The petitioner is challenging the order of cancellation of bail passed by the Additional Sessions Judge, Aurangabad dated 14.7.2022.

2. Heard Mr. A.D.Ostawal, learned counsel for the petitioner and Mr. S.P.Deshmukh, learned APP for the State.

3. Mr. Ostwal, learned counsel for the petitioner vehemently submitted that the Additional Sessions Judge, Aurangabad had earlier granted bail to the petitioner vide order dated 10.06.2022 in Cri. BA No.967 of 2022. The same court cannot cancel that bail by invoking section 439 (2) of the Criminal Procedure Code, 1973. He submitted that, it is for the higher court to cancel bail and not the Court which had granted the bail. He submitted that though the petitioner has suppressed the fact of decision of rejection of bail petition by the High Court, even in that case, the Additional Sessions Judge has no jurisdiction to cancel its own order of bail and direct the petitioner/accused to surrender before the Court. He submitted that, the impugned order is bad in law and liable to be quashed and set aside. He submitted that bail has been granted to the petitioner on merits. The property has been recovered. As such there is no need to keep the petitioner behind bars even by considering merits of the case.

4. Mr. S P Deshmukh, learned APP for the State strongly opposed to allow this application. He submitted that, it is a case of material suppression of fact by the petitioner while obtaining bail from the Sessions Court, Aurangabad. As soon as such fact was noticed by the Additional Sessions Judge, Aurangabad, he issued show cause notice to the petitioner/accused as to why bail should not be cancelled in view of material suppression of fact of rejection of bail by the High Court. He submitted that by giving an opportunity of being heard to the petitioner and by following proper procedure and by invoking section 439 (2) of Cr.P.C., the Additional Sessions Judge has rightly cancelled the bail granted earlier.

5. The legal question raised in the petition is about power of the Additional Sessions Judge to cancel bail granted by him by invoking section 439 (2) Cr.P.C.

6. On going through the impugned order dated 14.7.2022, it is revealed that the Additional Sessions Judge while hearing another bail application of co-accused noticed that, bail application filed by the

present petitioner in the High Court vide bail application no.431 of 2022 though rejected by the High Court, said fact was suppressed by the present petitioner while filing criminal bail application no.967 of 2022. The Additional Sessions Judge issued show cause notice to the petitioner vide order dated 22.6.2022 passed below exhibit 1. Accordingly, the petitioner appeared and offered explanation that since the petitioner was behind bars, he was not knowing filing of such bail application in the High Court and rejection thereof. Under these circumstances, the Additional Sessions Judge, Aurangabad vide order dated 14.7.2022 was pleased to cancel the bail granted by him to the petitioner in Cri.BA No.967 of 2022 in connection with CR No.510 of 2021 registered at Chikalthana Police Station, Aurangabad.

7. On going through both the orders and order passed by this Court in BA No.431 of 2022, it would be clear that after rejection of bail application by the Additional Sessions Judge, Aurangabad; the petitioner moved bail application no.431 of 2022 before the High

Court. Said Bail application was withdrawn when the High Court was not inclined to grant bail. Petitioner filed Cri. Bail Application 967 of 2022 before the Additional Sessions Judge, Aurangabad by suppressing the fact of rejection of bail application by the High Court vide order dated 13.4.2022 in bail application no.431 of 2022. There cannot be any doubt that the petitioner has suppressed material fact from the Additional Sessions Judge, Aurangabad while moving second bail application and succeeded in obtaining bail order from the Court.

8. The legal question is whether the Additional Sessions Judge, Aurangabad can *suo moto* cancel bail granted by him by noticing such suppression of fact by the petitioner/accused by invoking section 439 (2) of Cr.P.C.

9. Mr. Ostwal, learned counsel for the petitioner has placed his reliance in case of **Abdul Basit @ Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another** reported in **(2014) 10 Supreme Court Cases**

754. It is held by the Hon'ble Supreme Court that there is distinction between cancellation of bail and grant of bail. The facts of the cited case and the facts of the case in hand are distinguishable. In the cited case, the point revolving around was interpretation of Section 362 of the Code of Criminal Procedure, whether the court can alter its its own judgment by way of review, when the order of bail was challenged on the ground of it being contrary to law or illegal. In the present case, the petitioner has suppressed the fact of rejection of bail by this court vide order dated 13.04.2022 in bail application No.431 of 2022, while obtaining the bail order from the Additional Sessions Judge, Aurangabad. In the cited case, the Hon'ble Supreme Court has held that, "the power of review under Section 362 of the Code of Criminal Procedure is not available to the court granting the bail on the ground of it being illegal or contrary to law. It is for the higher court to make assessment of the bail order. As such, citation in case of **Abdul Basit @ Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another** (supra) is not helpful to the petitioner.

10. Section 439 (2) of the Code of Criminal Procedure provides for the powers of the High Court and the Court of Sessions regarding cancellation of bail granted to an accused person. it reads as under:

“439. Special powers of High Court or Court of Session regarding bail -

(1)

(2) A High Court or Court of Sessions may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

11. The learned Additional Sessions Judge has rightly invoked the provisions of 439(2) of the Code of Criminal Procedure and cancelled the bail granted earlier by him to the present petitioner on the ground of suppression of material fact. There is no such legal defect.

12. The only question remained, whether there is need to keep the petitioner behind the bars. There cannot be two opinions that the conduct of the petitioner is condemnable. This court cannot approve the conduct of the petitioner in not disclosing the fate of the earlier bail application rejected by the High Court. There is recent decision of the Hon'ble Supreme Court in case of

Jitendra Taneja Vs. State of Uttar Pradesh and others reported in **(2021) 5 SCC 308**, wherein identical facts find place.. It is revealed after having gone through the bail order passed by the Additional Sessions Judge dated 10.06.2022 that the reasoned and detailed order has been passed by the learned Additional Sessions Judge and granted bail with stringent conditions. The investigation is over and charge-sheet is filed. The *muddemal* property has been recovered. Under these circumstances, there is no propriety to keep the petitioner behind the bars, however, certain costs need to be imposed on the petitioner for suppression of material fact of rejection of his earlier bail application by this Court, it would meet the ends of justice and may reach signal to such miscreants.

13. In view of the above, the petitioner is liable to be enlarged on bail on the same terms and conditions.

O R D E R

- i. Criminal Writ Petition stands allowed.
- ii. The impugned order of cancellation of bail passed by the Additional Sessions Judge

dated 14.7.2022 is hereby quashed and set aside.

- iii. Bail granted to the petitioner by the Additional Sessions Judge vide order dated 10.06.2022 is restored with same conditions.
- iv. The petitioner shall deposit cost of Rs.10,000/- (Rupees Ten Thousand only) with the Secretary D.L.S.A. Aurangabad within a period of one month from today for suppressing material fact. If cost is not deposited within stipulated period by the petitioner, the Additional Sessions Judge, Aurangabad may recover the same by coercive action.
- v. Petition is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

aaa/spr