

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

**BAIL APPLICATION NO.1487 OF 2022
WITH APPLN/3451/2022 IN BA/1487/2022**

1. Mayur Sarangdhar Patil
2. Mahesh Sarangdhar Patil ...Applicants

Versus

The State of Maharashtra ...Respondent

...

Advocate for Applicants : Mr. Pawar Hemantkumar F.

APP for Respondent/State : Mr. S.B. Narwade

Advocate for Assist to P.P. : Mr. Anand Kulkarni h/f Mr. G.A. Kulkarni

...

CORAM : S.G. MEHARE, J.

DATED : 11th OCTOBER, 2022

PER COURT:-

1. Heard learned counsel for the applicants, learned APP for the State and learned counsel Shri Kulkarni for the complainant.

2. The facts of the case in brief are that the applicants were unsuccessful in getting anticipatory bail till the Hon'ble Supreme Court. Thereafter, they were arrested and granted bail by the learned Additional Sessions Judge at Bhusawal by its order dated 29.10.2021 passed in Criminal Bail Application No.664 of 2021. However, the State of Maharashtra had approached this Court for cancellation of the bail granted to them. After hearing both the parties, this Court by its order dated 06.06.2022, in Application for Cancellation of Bail No.217 of 2021 allowed the applications and set aside the order of

the learned Additional Sessions Judge granting bail by order dated 06.10.2021 and 29.10.2021 in Criminal Bail Application Nos.605 of 2021 and 664 of 2021. In the said order in clause (iii) of the operative part, the Court directed the applicants to surrender before the learned Additional Sessions Judge, Bhusawal on 09.06.2022 before 05.00 pm. Learned counsel for the applicants requested the Court to stay the order cancelling the bail for four weeks. The Court was pleased to extend the time to surrender till 30.08.2022.

3. The applicants approached the Hon'ble Supreme Court against the above order cancelling the bail granted to them vide Petition(s) for Special Leave to Appeal (Crl.) No(s). 7781/2022 (Arising out of impugned final judgment and order dated 06.06.2022 in ACB No.222/2021 passed by the High Court of Judicature at Bombay at Aurangabad). The Hon'ble Supreme Court in paragraph no.2 has observed thus :

“However, it does appear appropriate and hence is observed that the impugned order cancelling bail earlier granted to the petitioner and dismissal of this petition shall not be of impediment in the petitioner applying for regular bail after surrendering.”

4. After the order passed by the Hon'ble Supreme Court (cited supra), instead of surrendering before the learned Additional Sessions Judge at Bhusawal as directed by this Court, the applicants surrendered before this Court and obtained the order dated

13.09.2022, whereby the applicants were released on provisional bail for a period of next one week on executing the PR. Bonds.

5. Learned APP and learned counsel appearing for the complainant have vehemently argued that the applicants have misinterpreted the order of the Hon'ble Supreme Court and instead of surrendering before the learned Additional Sessions Judge as per the direction of this Court, they have directly surrendered before this Court. This is disobedience of the order of this Court.

6. Learned counsel for the applicants would submit that the Hon'ble Supreme Court did not direct specifically before which Court the applicants should surrender. Relying on the case of Sundeep Kumar Bafna Vs. State of Maharashtra and Anr in Criminal Appeal No.689 of 2014 (Arising out of SLP (Crl.) No.1348 of 2014), he would argue that the Sessions Court and the High Court have the concurrent powers under Section 439 of the Code of Criminal Procedure. Therefore, bail application can be entertained by this Court.

7. The question before this Court is not, whether or not the application under Section 439 of the Code of Criminal Procedure should be entertained by this Court. The parties are bound by the orders of the Court unless set aside by the Higher Court or modified by the same Court. The applicants have no arguments that they have also assailed the directions of this Court about surrendering before

the learned Additional Sessions Judge. The Hon'ble Supreme Court did not disturb the order of this Court dated 06.06.2022. The right to file a fresh bail application has also not been disturbed. The right to file an application for fresh bail application in the above circumstances has been protected by the law itself.

8. Considering the order passed by this Court and Hon'ble Supreme Court (cited supra), this Court was of the view that the order of the Hon'ble Supreme Court and High Court shall be read together. The facts must have been before the Hon'ble Supreme Court about the directions issued by this Court. Therefore, the order of the Hon'ble Supreme Court may be interpreted that opportunity granting the applicants to surrender was in pursuance of the order of this Court. The Court had expressed the opinion before recess that in view of both the orders of the Hon'ble Supreme Court and High Court, the applicants were to surrender before the learned Additional Sessions Judge, Bhusawal.

9. Learned counsel appearing for the applicants sought time to seek the instructions from the applicants. After recess, he made a statement that the applicants are ready to surrender before the learned Additional Sessions Judge at Bhusawal; however, protection may be granted to the applicants till surrendering before the Additional Sessions Judge at Bhusawal. His request may be accepted

in view of the provisional bail granted to the applicants by this Court.

Hence, the following order :

ORDER

I) The application stands disposed of as the applicants expressed willingness to appear before the learned Additional Sessions Judge at Bhusawal.

II) The applicants may surrender before the learned Additional Sessions Judge at Bhusawal on or before 14.10.2022 at 10.30 am. Till then, the provisional bail granted to the applicants by this Court by order dated 13.09.2022 would continue.

III) After surrender of the applicants, the learned Additional Sessions Judge at Bhusawal shall proceed with the matter according to the law.

IV) After surrender, if the applicants file bail applications under Section 439 of the Criminal Procedure Code within reasonable time, the learned Additional Sessions Judge, may endeavour to disposed of the bail applications before the Diwali Vacation begins, subject to the fullest cooperation of all parties concern by all means.

V) Criminal Application No.3451 of 2022 is allowed.

(S.G. MEHARE, J.)