

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3316 OF 2021
IN
APPLICATION FOR CANCELLATION OF BAIL NO.129 OF 2021

DNYANESHWARI HARICHANDRA GHUGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. G. R. Ingole h/f Mr. J. S. Gangawane, Advocate for applicant.
Mrs. Vaishali Patil Jadhav, APP for respondent No.1 – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01.03.2022

ORDER :-

. Present application has been filed by the original applicant for restoration of Application for Cancellation of Bail No.129 of 2021 by setting aside the order of dismissal of the said application by this Court on 13.12.2021.

2. Heard learned Advocate Mr. G. R. Ingole holding for learned Advocate Mr. J. S. Gangawane for the applicant and learned APP Mrs. Vaishali Patil Jadhav for the respondent No.1 – State.

3. It has been vehemently submitted on behalf of applicant that the applicant had filed application bearing ACB No.129 of 2021 for

cancellation of bail granted to respondent No. 2 to 5. The said application came to be dismissed for want of prosecution as the learned Advocate for the applicant was not present. The learned Advocate for the applicant was out of station on 22.11.2021 when the matter was listed. He could not reach the Court as there was strike of the State Transport Buses. Thereafter, learned Advocate for the applicant had matter before District Consumer Forum at Valsad in Gujarat State. He could not appear before this Court and the application came to be dismissed on 13.12.2021. The absence of learned Advocate was not deliberate. He tenders unconditional apology and, therefore, matter needs to be restored.

4. Learned Advocate for the applicant has relied on the decision in *Madan Lal Kapoor Vs. Rajiv Thapar and others, [(2007) 7 SCC 623]*; wherein it has been held that “Dismissal of criminal revision for default or non-prosecution without going into the merits of the case is not permissible”.

5. Learned APP submitted that no reasonable ground has been shown by the applicant for the restoration of application. Learned Advocate being busy before another Court cannot be the ground for restoration. Learned Advocate had not even taken care to seek

adjournment before this Court.

6. At the outset, it can be seen that the dismissal of the application for cancellation of bail was not the result of one day's absence of the learned Advocate for the applicant. Notice came to be issued by order dated 31.08.2021. Thereafter, notices of respondent No. 2 to 5 were awaited on 20.09.2021. On 08.10.2021, none appeared for applicant i.e. present applicant. Respondent Nos.2 to 5 sought time to file reply and matter was adjourned to 22.11.2021. On that day, learned Advocate for the applicant was again absent. He was absent once again on 13.12.2021 and, therefore, the application was dismissed for want of prosecution. Thus, there was continuous absence of learned Advocate for the applicant on three dates. It is surprising that he had given preference to District Consumer Forum. It was situated in Gujarat State. Learned Advocate for the applicant had every knowledge that he will not be able to remain present before this Court on that day after attending said Forum. He ought to have made arrangements to convey the fact to this Court. Learned Advocate being busy before another Court is not a good ground to adjourn the matter. Learned Advocate ought to have fixed the preferences for attendance before any Court then. The decision relied by him is not applicable to the facts of this case. It has been held in the said case that in earlier decisions it was held that criminal appeal

should not be dismissed in default and on the same footing criminal revision also cannot be dismissed in default. That criteria cannot be applied to an application for cancellation of bail.

7. Applicant has failed to give sufficient and good reasons for restoration of the application. Hence, this application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm