

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

ANTICIPATORY BAIL APPLICATION NO. 315 OF 2022

Mubben Noor Mohammed Ibrahim Dauwa Applicant
Versus
The State of Maharashtra Respondent

Mr. Sujit Mashal i/b. Nasikwala Law Office for Applicant.
Ms. S. S. Kaushik, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 15th FEBRUARY 2022

P.C. :

1. Leave to amend is granted. Amendment to be carried out forthwith.
2. The Applicant is seeking anticipatory bail in connection with C.R.No.213 of 2019 registered at Nagpada Police Station, on 13/07/2019 under sections 406 and 420 r/w. 34 of the Indian Penal Code (for short 'IPC').
3. Heard Shri. Sujit Mashal, learned counsel for the applicant and Ms. Kaushik, learned APP for the State.
4. The First Information Report (for short 'F.I.R.') is lodged by one Jamil Merchant. In short, the allegations are that,

he and his wife had planned to go for Haj and for that purpose they had given Rs.6 lakhs to one Noor Mohammad who is applicant's father. He was having his travel company by the name Alfa Enterprises. The allegations are that, after accepting the money, office of the said company was closed and phone was also disconnected. The informant lost his money.

5. At the first instance, the applicant was granted anticipatory bail by the learned Additional Sessions Judge vide his order dated 29/06/2020 passed in A.B.A.No.628 of 2020 in connection with the same offence i.e. C.R.No.213 of 2019 registered with Nagpada police station. After that, vide order dated 02/08/2021, learned Additional sessions Judge, Mumbai cancelled the bail granted to the applicant by passing following order:

“Exh. 3 Notice served on non applicant.

Heard APP at length perused record. It appears that in spite of directions to attend police station on every day between 10.00am to 12.00 noon till 10.07.21 the non applicant/accused has not attended the police station and has not complied with the orders dated 29/06/2020 passed in ABA No.628/20. As the non applicant/accused has committed breach as the order dated 29/06/2020 therefore said order is cancelled and called back. Accordingly now there is no protection for the non applicant/accused. IO is at liberty to take

appropriate action against the non applicant/accused. Accordingly MA is allowed and disposed off.

Authenticate copy of roznama be given to both parties.”

6. Learned counsel for the applicant makes a categorical statement that, notice for cancellation of bail was not served on him. He was not heard when this order was passed and, therefore, there is violation of principles of natural justice.

7. Learned APP supported the order passed by the learned Additional Sessions Judge because the applicant had not complied with the condition. The condition was to attend the concerned police station between 10.00a.m. to 12.00noon till 10/07/2021 from 29/06/2020.

8. Learned counsel for the applicant submitted that, during that period he had to go to Gujarat in connection with different investigation and, therefore, he was unable to attend the police station. He could have pointed out this fact to the learned Judge when application of the State for cancellation of bail was heard. But that opportunity was not given to the applicant.

9. Taking into account the submissions of learned counsel

for the applicant, it does appear that the applicant deserved at least hearing before bail was cancelled. The order of cancellation of bail shows that the applicant was served. The contention of the applicant's learned counsel is otherwise. Without going into this disputed aspect, the applicant can be given one opportunity in the interest of justice. Therefore, in the interest of justice, it would be appropriate if the applicant is heard by the Sessions Court in respect of the State's application for cancellation of bail. Since the applicant is now aware of such application filed by the State, notice would not be necessary to be served on the applicant. I am fixing the date on which the applicant or his counsel can attend the sessions court and put-forth their case.

10. Hence, the following order :

ORDER

- (i) The order dated 02/08/2021 passed below Exh.3 in M.A. in ABA No.334 of 2020 is set aside. Same application is restored to file.
- (ii) The State of Maharashtra, as well as, the applicant himself or through his counsel shall appear before the sessions court on 01/03/2022.
- (iii) In the meantime, till 01/03/2022, in the event

of arrest of the applicant in connection with C.R.No.213 of 2019 registered at Nagpada Police Station, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (iv) Learned Judge shall decide that application in accordance with the law after hearing both the sides.
- (v) The Applicant shall deposit his Passport with the Investigating Officer, if it is not already deposited in any other investigation.
- (vi) With these directions the application is disposed of.

(SARANG V. KOTWAL, J.)