

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

**CRIMINAL APPLICATION NO.388 OF 2017**

Ramharak Prasad Kanojia

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mrs. Anjali Awasthi for the Applicant.

Mr. P.H. Gaikwad, APP for Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**JUDGMENT PRONOUNCED ON :22/08/2022.**

**JUDGMENT:-**

1. The Applicant herein has challenged the order dated 25/01/2017 passed by the learned Additional Sessions Judge, Greater Bombay. By the impugned order, learned Additional Sessions Judge, allowed the Misc. Application No.279 of 2016 filed by the prosecution and cancelled the anticipatory bail granted to the Applicant vide order dated 15/09/2015 in Anticipatory Bail Application No.530 of 2015.

2. Heard Ms Anjali Awasthi, learned counsel for the Applicant and Mr. P.H. Gaikwad, learned APP for Respondents-State. I have perused

the records and considered the submissions advanced by learned counsel for the respective parties.

3. One Mr. Sanjay Shetty, Secretary of Parkbay Co-op. Hsg. Soc. Ltd., lodged the FIR alleging that said Society is the owner and in possession of the property admeasuring 3812.73 sq. mts. under survey No.295, Hissa No.9, property admeasuring 250 sq. mts. under survey No.295, Hissa No.10(part) situated at Kole Kalyan, Taluka-Andheri, Mumbai. The complainant alleged that the Applicant herein was claiming to be the owner of the land admeasuring 411 sq. mts. under survey No.295 Hissa No.10.

4. The Complainant further alleged that one Smt. Najmunissa Abdul Gafar Chorghay was claiming right to the property under Survey No.295 Hissa Nos.10 and 12, CTS No.4949 and survey No.296, Hissa No.1(part) admeasuring 1086.97 sq.mts. by way of adverse possession. The complainant alleged that though said Najmunissa does not have any document of title in her favour, she has executed an agreement for sale and deed of conveyance dated 08/07/1996 and 10/12/1996 respectively in favour of the Applicant. On the basis of the said documents, the Applicant is claiming title to the property admeasuring 1086.97 sq. mts

under survey No.295 Hissa Nos.10 and 12 and survey No.296 Hissa No.1.

5. The Complainant has stated that the Applicant had filed a civil suit No.4271 of 2011 against the Assistant Municipal Corporation of BMC and Parkbay Society and Civil Suit No.6063 of 2003 against BMC, MHADA and the Parkbay society in City Civil Court, Mumbai, claiming ownership of the said property. He has stated that both these suits have been dismissed. The complainant has alleged that the Applicant is claiming right to the property on the basis of forged documents.

6. Pursuant to the complaint lodged by Sanjay Shetty, Crime No. 87 of 2014 was registered against the Applicant for offences punishable under Sections 420, 467, 468 and 120-B of the IPC. Apprehending his arrest in the said crime the Applicant filed an application under Section 438 of the Cr.P.C. being Anticipatory Bail Application No.530 of 2015. By order dated 11/03/2015, learned Judge had granted interim protection to the Applicant with condition that he shall not tamper with the prosecution evidence, shall remain present before the investigating officer on every Monday and Friday between 3 to 5 p.m., that he shall not involve in any other criminal activity and that he will not leave India without prior permission of the Court.

7. By order dated 15/09/2015, learned Additional Sessions Judge allowed the application for anticipatory bail by confirming the interim protection granted to the Applicant by order dated 11/03/2015 with further directions to report to the police as and when required.

8. The Respondent-State filed an Application for cancellation of bail alleging that in breach of order dated 11/03/2015 and 15/09/2015, the Applicant had entered into an agreement with a builder in respect of the same property. The Respondent therefore sought cancellation of bail alleging violation of conditions of the bail order. By the impugned order, learned Judge cancelled the bail on the ground that entering into an agreement with a builder amounts to tampering of prosecution evidence and breach of bail condition.

9. The question for consideration is whether in the facts and circumstances of the case, learned Judge was justified in cancelling the bail granted in favour of the Applicant.

10. It is well settled that consideration of an application for grant of bail stands on a different footing than one for cancellation of bail. In *Dolat Ram and ors. v/s. State of Haryana, 1995 SCC (1) 349*, the Hon'ble

Supreme Court has held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. The bail once granted cannot be cancelled in a mechanical manner, without considering whether the accused has misused the liberty of bail and whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

11. In *Myakala Dharmarajam and ors. v/s. The State of Telangana and anr. (2020) 2 SCC 743*, the Hon'ble Supreme Court has reiterated that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The Hon'ble Supreme Court has emphasized that the above grounds are illustrative and not exhaustive and has further cautioned that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of

the individual and hence, it must not be lightly resorted to.

12. In *Vipan Kumar Dhir v/s. State of Punjab and Anr. (2021) SCC Online SC 854*, the Hon'ble Supreme Court while reiterating the principles in *Dolat Ram* (supra) and *X v/s. State of Telangana and anr. (1995) 1 SCC 349* has held that in addition, bail can also be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations where a superior court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.

13. In the instant case, the allegations in the FIR are that the property under Survey No.295/10 and 12 is owned by the Parkbay Co-operative Housing Society and that the Applicant is claiming title to the said property on the basis of forged and fabricated documents. While granting pre-arrest bail to the Applicant, learned Judge had observed that Najmunissa had purchased property under Survey No.295/10 (part) by registered sale deed dated 24/05/1973. She had entered into an

agreement for sale dated 08/07/1996 in favour of the Applicant. She also executed a power of attorney in favour of the Applicant on 08/07/1996, on the basis of which the property was transferred in favour of the Applicant by sale deed dated 10/12/1996. Learned Judge observed that genuineness of these documents is in question. Nevertheless, learned Judge granted pre-arrest bail considering the fact that all the relevant documents were in custody of the investigating agency and also considering the fact that the Applicant was 75 years of age. One of the bail conditions imposed in the bail order was not to indulge in any criminal activity.

14. Subsequent to the said order, the Applicant entered into an agreement with a builder in respect of the said property. This according to the learned Judge amounts to tampering with prosecution evidence and indulging in criminal activity, which is in violation of the bail condition. It is not in dispute that subsequent to the order of grant of bail, no crime has been registered against the Applicant for committing any crime. Suffice it to say that entering into an agreement is per se not an offence and cannot be construed as criminal activity. It is also pertinent to note that execution of an agreement is not an act which alters, falsifies or destroys the prosecution evidence or hampers

investigation. There was thus no cogent and satisfactory material to indicate that the Applicant had in fact violated the condition of the bail. There is nothing on record to show that the Applicant has misused the liberty. There were no supervening circumstances to cancel the bail. As noted above, cancellation of bail order has harsh consequences as it interferes with liberty of an individual and must not be lightly resorted to. Hence, it was incumbent upon the learned Judge to exercise its discretion judiciously and cautiously in strict compliance of the principles laid down by the Hon'ble Supreme Court in regard to the cancellation of bail. Instead, learned Judge has cancelled the bail and curtailed liberty of the Applicant in a very casual and mechanical manner, without there being any justifiable circumstances much less overwhelming circumstances. The impugned order suffers from material infirmity, is illegal and perverse.

15. Under the circumstances and in view of discussion supra, the Application is allowed. The impugned order is set-aside. The bail order dated 15/09/2015 stands restored.

**(SMT. ANUJA PRABHUDESSAI, J.)**