

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO.361 OF 2021**

Ganesh @ Sudhakar Kantappa @ ]  
Dottya Pujari ] ... Applicant

Vs.

The State of Maharashtra & Anr. ] ... Respondents

...

Ms. Tripti Shetty for the applicant.

Mr. L.M. Shukla for respondent No.2.

Ms. Veera Shinde, A.P.P. for the State.

Mr. Tanaji Patil, PSI is present in the court.

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**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 22<sup>ND</sup> JUNE, 2022.**

**P.C.:-**

1. By the present application, the applicant pose a challenge to the order passed by the Additional Sessions Judge, Borivali, Dindoshi, Mumbai on 06/02/2021 on an application filed for cancellation of bail.

2. The applicant is arraigned as an accused in C.R. No.71 of 2019 and faces accusations under Sections 409, 420 read with Section 34 of the IPC. On 27/04/2020, he came to be released on bail by recording that on completion of investigation, the charge-sheet has been filed and it will take much time to conclude the trial and no purpose will be served in keeping him in jail despite completion of investigation. Exercising discretion in favour of the applicant, the applicant was released on bail, subject to the stipulation that he shall abide by the condition imposed upon him.

3. An application was moved by the complainant to cancel the liberty conferred on the applicant and the ground on which the application was pressed was that on an earlier occasion i.e. on 09/04/2020, the bail application was rejected. Learned Metropolitan Magistrate considered the merits of the matter and agreed with the order passed on 27/04/2020 that the investigation is complete and there are meager chances of the applicant fleeing from the course of justice. Considering that arduous conditions were imposed, restricting his travel on account of Covid pandemic, the application came to be rejected.

4. Being aggrieved, the complainant once again approached the Sessions Court at Dindoshi and by order dated 06/02/2021, which is impugned in the present application, the bail granted to the applicant/accused No.2, was cancelled.

5. Perusal of the said order placed on record at page 13 (Exh.-A) would reveal that the order has been passed as a punishment on the ground that the applicant did not disclose the earlier rejection of an application on 09/04/2020 and since it is observed that he has misled the learned Magistrate, the application came to be rejected.

6. The approach adopted by the learned Sessions Judge, in my opinion, is not appropriate one. Learned Magistrate allowed the application on 27/04/2020 by balancing the para-meters, exercising his discretion to release the applicant on bail, as contemplated under Section 439 of the Cr.P.C. Recording that the investigation is complete and the charge-sheet is filed and the trial may not be concluded in near future, he came to be released on bail. The situation remain the same as of today. Though the charge-sheet has been filed in the year 2019, till date the charges are not framed and the trial has a long way to go. On the accusations of Section 420 and 409 read with Section 34 of the IPC with no criminal antecedents and no apprehension expressed by the prosecution that he will not make himself available for trial, I do not think that the applicant shall be kept incarcerated only because the complainant feels so, particularly when the Metropolitan Magistrate on the first occasion on 27/04/2020 released him on bail and, on an application for cancellation of bail was moved, once again on 19/05/2020 conferred upon him

the liberty.

7. In absence of any flight risk or breach of conditions at the instance of the applicant being brought on record by the prosecution, his bail could not have been cancelled only on the ground that he has misled the court. The merits of the matter ought to have been considered, which has been duly considered by the Metropolitan Magistrate and, therefore, the impugned order is set aside by restoring the order dated 27/04/2020. The applicant shall be released on bail subject to the following conditions:

### **ORDER**

- (a) The applicant – **Ganesh @ Sudhakar Kantappa Pujari** shall be released on bail in C.R. No.71 of 2019 registered with Vanarai Police Station, District Mumbai on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The applicant shall, on his release, report to the

Vanarai Police Station from 30/06/2022 to 02/07/2022 between 02.00 p.m. and 05.00 p.m. and co-operate with the investigation as also, appraise the Investigating Officer of his address of residence as well as his contact number. The Investigating Officer shall verify the same and if required direct him to report to the police station on one more day.

- (d) The applicant shall continue to mark his presence in the court of Metropolitan Magistrate once in every three months.

8. The application is disposed off in the aforesaid terms.

**[SMT. BHARATI DANGRE, J.]**