

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1806 OF 2021****IN****BAIL APPLICATION NO. 1979 OF 2021****(modified as per order dt.22/9/2022)**

Diana Raj Tyagi nee Diana Bomi .. Applicant
Mehta

Versus

Raj Ramdeo Tyagi and ors .. Respondents

WITH

INTERIM APPLICATION NO. 3022 OF 2021**IN****BAIL APPLICATION NO. 1979 OF 2021**

The State of Maharashtra .. Applicant

Versus

Raj Ramdeo Tyagi .. Respondent

WITH

INTERIM APPLICATION NO. 2538 OF 2021**IN****BAIL APPLICATION NO. 1979 OF 2021**

Raj Ramdeo Tyagi .. Applicant

Versus

Diana Raj Tyagi nee Diana Bomi Mehta .. Respondent

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Mr. Sanjog Parab, Sr. Advocate with Mohan Rao, Sulabha Rane
i/b Parab & Associates for the applicant in IA No.1806/21.

Mr.Prashant Pandey with Aiqan Memon, Irfan Unwala, Nikitesh
Kotangale, Darshit Jain i/b W3Legal LLP for respondent no.1.

Mrs.Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
RESERVED : 29th JULY, 2022
PRONOUNCED : 15th SEPTEMBER, 2022

P.C:-

1 All the aforesaid proceedings revolve around an order passed by this Court in favour of the Mr.Raj Tyagi (hereinafter referred to as 'the respondent') in connection with C.R.No. 271/2020 and the relevant order is the one which is passed by this Court on 23/6/2021, under which he was released on bail in connection with the subject C.R. registered on a complaint filed by the wife Diana Tyagi (referred to as 'applicant') by taking note of the affidavit/undertaking filed by him.

2 IA No.1806/2021 seek cancellation of the bail granted to the respondent, whereas by filing IA No.3022/2021, the same relief is sought by the State of Maharashtra, by projecting that the conditions subject to which the applicant was released on bail, and hence, the protection granted by this Court in his favour deserve to be withdrawn.

3 IA No. 2538/2021 is filed by the respondent Raj Tyagi where he seek modification of the undertaking/affidavit executed by him on 23/6/2021 in Cr. Bail Application and he seek deletion of the bail condition as contained in the order dated 23/6/2021 vide point no.(vii).

4 In support of the distinct applications, I have heard Sr. Advocate Mr.Sanjog Parab representing Diana Raj Tyagi, the applicant in IA No.1806/2021 and who also represent her in capacity as the respondent in the application filed by Raj Tyagi.

 Heard learned counsel Mr. Mr.Prashant Pandey who represent Raj Tyagi. Heard Mrs.Rutuja Ambekar, learned APP for the State.

 In order to appreciate the claim of the parties instituted through their distinct applications, it is necessary to briefly refer to the background in which the applications have to be considered.

5 The two contesting parties before me, Ms.Diana and Mr.Raj Tyagi had tied the nuptial knot on 20/12/1996 under the provisions of Special Marriage Act and suffice it to note that there are four children born out of the wedlock. The discord between the couple arose as the respondent was addicted to liquor and though initially they stayed in a joint family since the year 2020, the couple started residing separately along with their children. The strained relationship between the couple resulted in the applicant lodging a complaint in Worli Police Station on 16/7/2020 which invoked the offence punishable u/s.323, 504, 506, 498A of IPC.

 The complainant/wife alleged in her complaint that the husband indulged into serious quarrel on spending money on

purchase of household articles and she complained of his drinking habit and suspicious behaviour. Several instances came to be cited by her where she was harassed physically and emotionally and it is alleged that from the year 2007-2016, though she continued to reside with the accused along with her four children, he continued with the harassment and the incidents of domestic violence are witnessed by the domestic help, security guard etc. It is alleged in the complaint that since she belong to a reputed family, she always made an attempt to save her marriage for the sake of her children and she never lodged any report to the police station.

In the complaint, she specifically refer to an incident dated 12/7/2020 when the accused under the influence of liquor, assaulted his daughter and when she intervened, he abused her. When one of her daughter started recording the incident in her mobile, he got annoyed and threatened to rape her. The applicant was petrified and she managed to rescue herself and her children from his clutches and took shelter in the neighborhood. She reported the incident to the police station and started residing in her parental house at Bandra.

6 On the said C.R being registered, the respondent came to be arrested on 21/3/2021 and moved an application before this court, seeking his release on bail.

While the application was pending, an attempt was made to settle the discord and the counsel for the applicant/accused on 18/6/2021 made a statement before the Court that he had exchanged the proposal for a viable settlement and he want to place it before the Court and since he is in custody, he shall be permitted to execute the affidavit in jail.

Pursuant to the said statement, on 18/6/2021, this Court permitted him to execute such an affidavit to be placed before this Court. In furtherance of the said direction, the accused affirmed the affidavit on 23/6/2021, wherein he gave various undertakings which included an undertaking on his part to bear the educational expenses of his four children and of continuing the facilities availed by the said children in various clubs, etc.

He agreed to dissolve the matrimonial relations in connection with Divorce Petition, which was pending on the file of the Family Court at Bandra by according his consent. An undertaking was also submitted that he shall not create any third party rights, title or interest or encumbrances with respect to the residential flats in his possession, till disposal of the divorce proceedings, and that he shall purchase the residential flat in the name of his wife in Bandra (West) equivalent to the size of the current flat situated at Worli, or else hand over the possession of flat no.31 at Worli, to her.

The important clause in the affidavit in form of undertaking no.(f) and (h) read as under :-

“(f) I state that I had decided to dissolve the matrimonial relations in connection with Divorce Petition No.A-1874/2020 which is pending on the file of learned Family Court, Bandra, by granting my consent for the same That it has also been resolved that, I shall not enter the jurisdiction of Bandra police station i.e. Bandra (West) where my wife is currently residing.

(h) I say that on being enlarged on bail by this Hon’ble Court I am ready to abide by condition as proposed to be imposed by this Hon’ble Court and undertake that I shall not flout or violate any of the conditions imposed by this Hon’ble Court.

At the end of the affidavit, he specifically stated that the affidavit was filed out of his own free will without any force or coercion from anyone.

7 When the Application was listed before this Court on 23/6/2021, (Justice P.D. Naik), the learned Judge exhaustively referred to the said affidavit and the undertaking contained therein.

In the wake of the said affidavit, the counsel representing the complainant/wife made a specific statement before the Court that she has agreed for the aforesaid terms and subject to the compliance of clause (c) to clause (f) of the affidavit, she accorded her consent for withdrawal of the proceedings.

8 Para-4 of the order, it was specifically recorded as under :

“4. It was contended on the previous date of hearing that the complainant apprehend danger to her life and the children in view of the alleged messages sent by applicant as pointed out by learned counsel for the complainant. The applicant in his affidavit has stated that applicant shall not enter the jurisdiction of Bandra West police station where the complainant reside”.

On instructions from the complainant, in the wake of the statement contained in the affidavit, No Objection was accorded for releasing the applicant on bail.

Paragraph no.5 and 6 of the order are also relevant and they are reproduced as under :-

“5. Learned counsel for the complainant on instructions submits that in view of the affidavit filed by applicant bail can be granted to the applicant. It is further submitted that the word ‘undertaking’ is not reflected in the affidavit. Learned counsel for the applicant on instructions submitted that this affidavit may be treated as undertaking to this Court. Statement is accepted. Affidavit is taken on record and marked ‘X’ for identification.

6. Learned APP submitted that condition be imposed that applicant shall not intimidate the complainant and their children. The gun has been seized during investigation from applicant and in the event the applicant demands the said Arm, he shall make

application to trial Court for return of Arm, and it may be directed that the Court shall decide the said application on merits”.

In light of the aforesaid observations, the application filed by respondent was allowed subject to certain conditions being imposed upon him and the operative portion of the order read thus:-

ORDER

- (i) Bail Application No.1979 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.271 of 2020 registered with Worli Police Station on furnishing P.R.Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report to the Worli Police Station, Mumbai, once in three months on first Saturday of the month between 11.00 a.m to 1.00 p.m till further orders;
- (iv) Applicant shall not tamper with the evidence and shall not intimate the complainant, their children or any other witness;
- (v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.50,000/- for a period of 12 weeks in lieu of sureties.
- (vi) In the event applicant prefers an application for return of Arm, seized by police, the trial Court shall decide the said application on merits.
- (vii) The applicant shall abide by the terms and conditions reflected in the affidavit filed by him.

(viii) In the order of breach of any conditions, the complainant/ prosecution will be at liberty to prefer an application for cancellation of bail”

9 It is this order, which is the bone of contention between the parties and Interim Application No.1806/2021 and IA No.3022/2021, seek cancellation of the said order, on the ground that there is breach of condition imposed upon the accused/respondent which deserve withdrawal of the protection granted in his favour.

10 The Application filed by Smt.Diana Tyagi has elaborately set out the circumstances, under which the relief is sought and the said circumstances are set out as under :-

- (a) On 26/6/2021, Diana received the message from Raj at 1.22 am and the message was a single word ‘Raj’.
- (b) Thereafter, on 26th June, 2021 at 9.12 p.m, 9.22 p.m and 9.31 p.m respectively, the applicant received 3 phone calls from an unknown number viz. 9987829710. In the first phone call spanning 6 minutes the caller whom, the applicant can identify as respondent no.1 spoke to the applicant calling himself Arun. He initially identified himself as Arun and was obviously under the influence of alcohol. In the course of the conversation another individual who also called himself Arun could be heard in the background and also spoke to the applicant calling her

as 'Bhabiji'. Respondent no.1 repeatedly asked to speak to the applicant and also clearly mentioned that, if he is not made to speak to the applicant he "would be coming to Bandra within the next 15 minutes". The phone call was full of abusive and filthy language and included variety of bad words such as "Abbe chootiya' and Madarchod".

(c) Another phone call was received at 9.22 p.m and the individual identified himself as Arun Singh calling the applicant "Bhabi Ji" apologized for the earlier phone call made by Raj to her. Third phone call was received, where Raj himself spoke to her and uttered the following :-

- (a) I will come to your place and make myself heard.
- (b) I'll give you one piece of advice, this is just the beginning.
- (c) You've not even heard what I want to say. I have not even told you what I want to say.
- (d) I will tell you 4 things or probably 5 things or 7 things that I am Raj and after that you all better be fucking careful.
- (e) I am very, very comfortable in Taloja jail 3.5 months I have spent there.
- (f) Record all this and I will not spare you all".
- (g) I will come there in half an hour.

(d) After the release of the accused on bail, the applicant received threatening message from him on 17/8/2020 where he threatened of digging six graves,

referring to six members of the family. The screen shots of the Whatsapp chats are marked as 'Exhibit-D'.

(e) Diana approached this Court by filing Writ Petition LDVC No.228/2020 and the Division Bench of this Court by order dated 25/8/2020 allowed the Writ Petition and provided police protection to her and directed the investigation to be conducted under the provisions of DCB of the concerned zone.

(f) N.C came to be filed on 10/8/2020 with Bandra police station by Security Head of applicant's father's building enumerating details of misconduct by Raj under the influence of alcohol.

(g) Diana filed additional statement with Worli police station on 8/9/2020, stating that on numerous occasions, Raj continued to intimidate and threaten her by arriving her father's building in total inebriated condition and created ruckus and refused to leave.

(h) The Whatsapp message is received by Diana from Raj read thus :-

"I will give one single advise. If I go down then every one goes down with me because you are the people who have done this to this to me don't bounce if you can put false allegation on me. I am speaking the truth waiting till 14th September".

(i) Immediately, after release, Raj continued with his intimidating spree and despite furnishing undertaking before the Court, he continued to pressurize her. Furthermore, again to the shock and surprise of the applicant, on 29th June, 2021, while the applicant was proceeding out of her building with regard to some personal work accompanied by her daughter Reva Tyagi and Police Naik Atul Deepak Ahire (PN – 040697) from Bandra Police Station, who was deployed by Bandra Police Station for applicant's protection, due to incidents dated 26th June, 2021, she spotted the respondent no.1, along with a person, whom applicant later identified as one Arun Singh waiting outside her building in Bandra in his vehicle bearing No. MH 1 ED 9229. The presence of the respondent no.1 outside her residence was in complete breach of the Bail condition dated 23rd June, 2021. Later on he followed the applicant's vehicle. The applicant therefore got down from her car to confirm his presence and to identify the person with him, when she was taking the photograph of his car, she noticed that, he was pointing a pistol/revolver towards Applicant's direction from his car. He also took the pictures of the Applicant and her car from the distance of 100 feet. The applicant therefore, out of fear proceeded to the Bandra police station along with her daughter and Police Constable Mr.Ahire. All this while,

respondent no.1 followed the applicants car till Bandra police station's gate. He later on within 10 minutes, while applicant was in Bandra police station, reached the Society's gate where applicant resides and started created a ruckus by violently abusing Security Head Mr.Sheet Mahoto and demanding him to let inside the building. The same was informed to the applicant by the Security Guard Mr.Mahoto. This made the Bandra police station to sent a patrol van to the Society. However, before Police Van could reach the Society, he eloped from there. Later on, again after sometime, when the patrolling van left the society's gate, respondent no.1 and his accomplice returned to the society's gate and started violently banging the gate of the building, trying to put his hand inside the gap in the wooden gate in an attempt to unlatch the stopper padlock so that he could go to the flat where the applicants children were. Security Guards at the building alongwith other drivers did their best to prevent him entering the building. Respondent No.1 kept on banging and abusing everyone asking them to let him in. After receiving the information of the same from Applicant's brother and Security Guard Mr.Mahoto, at the applicant's instance, Bandra Police Officials again sent a patrolling van to bring respondent no.1 to police station. However, again just 5 minutes before the patrolling van could reach the society's gate, he

left from the said place. As the applicant was in the Bandra police station, itself, she recorded the entire developments in her handwritten letter dated 29th June 2021.

11 The learned Senior Counsel Mr.Parab would submit that the aforesaid acts attributed to the respondent reflect blatant breach of his bail condition not to intimidate the applicant and her children and his undertaking that he shall not enter into the jurisdiction of Bandra Police Station.

The phone calls made to the applicant were made to intimidate her and created a fear psychosis, and according to him, apart from these acts, it is also in violation of his undertaking furnished to the Court and amount to violation of his bail condition, by entering into the jurisdiction of Bandra police station and following the applicant in broad day light being armed with a weapon. As per the learned counsel, it reflect upon his attitude, of showing disregard to the orders passed by this Court.

12 Per contra, the learned counsel Mr.Prashant Pandey appearing for the husband would contest the claim of the learned senior counsel and by filing his exhaustive affidavit, where he make a serious attempt to justify the behaviour of his client and he has towed a completely different line, where he state that his client gave a proposal on 20/1/2022 in the on-going mediation,

but the applicant had blatantly rejected the proposal, which shows her conduct that she is not desirous of resolving the matter.

The incident about entering the jurisdiction in Bandra as complained, is justified by him in the following manner:-

“(6) That the Respondent No.1 has not breached any of the conditions as alleged by the applicant by entering the jurisdiction of Bandra. That in regards with the incident dated 11/12/2021, the applicant has stated incorrect and false facts as the Respondent No.1 had visited the premises of the Applicant as he was informed that his wife i.e. the Applicant and one of the son was tested positive for COVID-19. That the respondent no.1 being a father and a husband was getting impatient as he was not able to talk to his wife and child despite them suffering from such a deadly disease. Hence, the respondent no.1 decided to go below the building where the applicant and the children resides to get an update about their health. That there is no complaint or statement given by the building watchman or any of the residents of the said building stating that the respondent no.1 created hue and cry as alleged by the applicant. Hence the allegations are baseless and the facts are twisted to prejudice the minds of this Hon’ble Court”.

13 The allegations levelled as regards invocation of Section 307 is denied in *toto* and even the incident of an attempt to cause harm to his son, is also specifically denied and it is submitted that there is no eye witness to affirm the allegations,

nor there is any medical certificate or police record placed on record.

The specific incidents of breach of condition is responded to, 28 in the following manner :-

“(28) That the contents mentioned in paragraph no.24 and 25 are totally baseless, vague and incorrect and the same are denied by the respondent no.1. That the respondent no.1 never threatened the applicant or his children after being released from the jail. That all the said allegations are totally false and baseless only to harass the respondent no.1 and to get his trial cancelled. That the contents mentioned in the said paragraphs are already part of second FIR and on the contrary academically speaking if there was any truth to it there should have been supplementary charge-sheet instead of second FIR”.

The allegation of being armed with a weapon is meted out as under :-

“With reference to ground (j), I deny the false contentions of the applicant, I reiterate that there has been no recovery of weapon from me as alleged by the applicant. Further, as stated by the applicant herself, I am no longer a Director in Tiger Guards Pvt.Ltd. I further state that I have surrendered my licensed weapon to the police on 2020. The applicant is using my family business of providing security services as a tool to levy false allegations against me”

14 During the course of hearing of the application, when the learned counsel Mr.Pandey kept on insisting that his undertaking not to enter the jurisdiction of Bandra Police Station i.e. Bandra (West), where his wife is residing, cannot be construed as a condition binding upon him *dehors* the other clauses, I deemed it appropriate to place the application filed by him for modification of the conditions before the same Judge (Justice Prakash Naik) since it was specifically submitted before me that the learned Judge has misconstrued the terms of the affidavit.

Since the question arose of, interpretation of the order passed on 30/6/2022, the application was heard by the same Bench on 20/7/2022 and on hearing the respective counsel, the learned Judge has clarified as under :-

“I have perused the order dated 23/6/2021 and affidavit filed by respondent no.1. The application for bail was heard by this Court. Respondent no.1 was permitted to file affidavit. It was executed before jail official. Clause (f) of the said affidavit states as follows :-

“(f) I say that, I have decided to dissolve the matrimonial relations in connection with Divorce Petition No.A-1874/2020 which is pending on the file of Ld.Family Court, Bandra by granting my consent for the same. That is has also been resolved that, I shall not enter the jurisdiction of Bandra police station i.e. (Bandra West) where my wife is currently residing”

The contention of the learned counsel for respondent no.1 is that condition not to enter within the jurisdiction of

Bandra Police Station (Bandra West), will be subject to first part of the averment in the said clause and effective only after dissolving matrimonial relations in connection with divorce petition. Such submissions and interpretation cannot be countenanced. The statement clearly indicates that he shall not enter the jurisdiction of Bandra Police station (Bandra West) where wife of respondent no.1 resides. Thus, it cannot be said by any stretch of imagination that aforesaid condition would be subject to dissolution of marriage. Order dated 23rd June 2021 takes into consideration the contents of affidavit filed by respondent no.1. This Court while granting bail has reproduced the contents of affidavit. In paragraph 4 of the bail order, it is recorded that the complainant apprehends danger to her life and children in view of messages sent by respondent no.1. To deal with such apprehension this Court in the same paragraph has observed that the applicant (respondent no.1) in his affidavit has stated that he shall not enter the jurisdiction of Bandra West Police Station where the complainant resides. In the following paragraph no.5 of the said order, it was recorded that learned counsel for complainant on instructions submit that in view of affidavit filed by applicant (respondent no.1), bail can be granted to him. The advocate for complainant also expressed that the word 'undertaking' is not reflected in the affidavit. Learned advocate for applicant (respondent no.1) on instructions submitted that the said affidavit be treated as undertaking to this Court. Statement was accepted and affidavit was taken on record. It is also pertinent to note that the FIR refers to threats, assault and use of revolver. It would be absurd to contend that condition not to enter jurisdiction of Bandra West Police Station is subject to other terms in affidavit or

subject to dissolving marriage between parties. The application was listed for speaking to minutes on 28th June 2021. It was not contended that the contents of affidavit were misconstrued by this Court. The decision relied by learned Advocate for respondent no.1 was decided in different context. Even accepting the principles laid down in the said decision, the misconstrued interpretation of learned advocate for respondent no.1, cannot be accepted”.

15 On passing of the above order, it has now been reiterated that the release of the applicant was subject to compliance of the undertaking submitted by him in his affidavit dated 23/6/2021. In the said affidavit, the respondent husband had specifically undertaken not to enter the jurisdiction of Bandra Police Station where his wife was residing. Accepting the said undertaking, he came to be released on bail on 23/6/2021 with a specific condition being imposed while securing him his liberty that he shall not intimidate the complainant, their children or any other witness and he shall abide by the terms reflected in the affidavit.

It was thus imperative for the applicant to abide by the undertaking given by him, which was culminated into the condition of his release on bail, of not entering the jurisdiction of Bandra police station and not intimidating the complainant and her children.

16 Shortly, after his release on bail, the applicant informed the Sr.P.I of Bandra Police Station vide her communication dated 27/6/2021 about the Whatsapp message and the phone calls made to her which used abusive and filthy language. She also complained of a phone call received by her on 26/6/2021 made by the respondent himself where he made certain derogatory remarks and threatened her. She apprehended danger to her life and to the life of her four children and demanded police protection.

 In order to substantiate her stand, she handed over pen-drive of the recordings of the three calls received by her. Another complaint came to be lodged by the applicant with the Sr.P.I Bandra Police Station barely two days away from the first complaint, where she noticed the car of her husband parked outside her father's residence within the jurisdiction of Bandra Police Station and on getting down from the vehicle, she took photographs of his car and noticed him, pointing out a pistol/revolver in her direction. She identified one Arun Singh who had accompanied him from whose mobile she had received three calls on 26/6/2021. Raj Tyagi is alleged to have parked his car and took pictures of her along with her vehicle and when she started driving towards Bandra Police Station, he followed her. The applicant stated in the complaint that she was accompanied by her daughter Reva in the vehicle and he passed ahead from the gate of the police station where she reported the matter.

17 The above allegation resulted in registration of C.R.No. 409/2021 with Bandra Police station, which invoked Section 354B, 506-II and Section 307 IPC. As a part of the investigation, the photograph of the respondent in front of his vehicle is also produced.

It is thus apparent that while being on bail, subject to compliance of the undertaking given by him to this Court, for flouting the said undertaking, another C.R. is registered against him, when he is found stalking and intimidating the applicant and the fact that the C.R. is registered and he has been charge-sheeted for the said act is itself indicative of his disregard to the order passed by this Court, releasing him on bail.

It is no doubt true that Mr.Raj Tyagi has been released on bail in C.R.No. 409 of 2021 (BA No.2333/21) by the Sessions Judge on the ground that the charge-sheet has been filed and the weapon alleged to have been used in commission of the offence, has not been seized.

Considering that the nature of the offence is not grave, and by recording that no purpose will be served by curtailing the liberty, he came to be released on bail, again imposing a similar condition that he shall not enter the jurisdiction of Bandra Police station for any purpose and shall not give threat or pressure to the informant and witnesses.

Continuing with his relentless and obdurate behaviour, even this time, Mr.Raj Tyagi flouted the said orders.

18 The applicant once again, on 6/10/2021 approached the Bandra Police station reporting about violating the said orders and she stated that she received a phone call from an unknown number and on answering the phone, found Mr.Tyagi on the line who was in drunken condition, slurring and mumbling. Apart from this, it is alleged that on 25/9/2021 and 28/9/2021, she received threatening calls at odd hours from unknown numbers and she specifically reported about the threats received by her, highly abusive and intimidating in nature. She once again handed the pen-drive containing the recording of the calls which have been collected under the panchnama.

Another complaint is lodged by the applicant against Tyagi on 17/11/2021 again threatening and intimidating one Mr.Dhananjay Khandare, a witness in Sessions Case No.360/2021 and it is expressed that not only she, but her near ones who are supporting her, face threat from him.

29 On perusal of the entire compilation of documents placed on record by the applicant with a simple denial by Mr.Tyagi, I cannot desist from noticing his attempts to repeatedly intimidate the applicant who is his wife. The Investigating Officer has investigated the allegations levelled in various N.C. complaints as well as the subject C.R. No.409/2021.

19 The investigation and the N.C. complaints prompted even the Sr.P.I, Worli Police Station, to take out an application seeking cancellation of bail of Raj Tyagi, alleging breach of the conditions imposed on him, while releasing him on Bail.

Criminal Application No.3022/2021 filed by the State, disclose that on taking cognizance of the complaints and on further investigation, it has been noticed that the respondent has deliberately flouted clause (iv) of paragraph no.7 of the order dated 23/6/2021 passed in BA No.1979/2021 and a separate FIR has been registered with Bandra Police Station on 29/6/2021, invoking Sections 504, 506, IPC. It is therefore, prayed that the bail granted in favour of the applicant, deserve to be cancelled and he should be once again confined behind bar, for the effective conduct of trial.

20 The learned counsel Mr.Pandey has relied upon certain authorities, to buttress his submission, that cancellation of bail once granted is a serious affair and once liberty is conferred, save and except, in exceptional circumstances to be pointed out, it shall not be withdrawn.

Reliance upon the decision in the case of *State & Ors Vs. Amarmani Tripathi & ors, 2005(8) SCC 21*, in no way assist him since by the said decision, the Supreme Court had set aside the order of the High Court releasing the respondents on bail and they were directed to surrender.

Decision of the Apex Court in case of *Jagjeet Singh and Ors Vs. Ashish Mishra @ Monu and Anr, (Arising out of SLP (Cri) No.2640/2022)* which is cited by the learned counsel is also not of any succor to him.

The decision in case of *Dolat Ram and ors vs. State of Haryana, 1995 (1) SCC 349*, where the High Court cancelled the bail, and on being aggrieved, the applicant approached the Apex Court and Their Lordships made the following observation :

“Rejection of bail in a non-bailable case at the initial stage and cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds of cancellation of bail, broadly, (illustrative and not exhaustive) are: interference or attempt to interfere with due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in the mechanical manner without considering 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”.

21 The case of the applicant seeking cancellation of bail granted in favour of the respondent squarely meet the aforesaid requirements.

Grant of bail though being a discretionary order, however calls for exercise of such a discretion in a judicious manner and the exercise would be dependent upon the contextual facts of the matters being dealt by the Court, the facts which may vary from case to case. True, it is that once bail is granted, it cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it inconducive to allow fair trial.

From the sequence of events narrated above, it can be clearly seen that considering the serious nature of accusations, this Court was persuaded to release the applicant on bail, on the affidavit filed by the accused where he gave certain undertakings which included his undertaking that he shall not enter the jurisdiction of Bandra police station.

It is only upon the commitment made by the accused in his affidavit, the complainant wife accorded her No Objection to release him on bail, and this Court took the affidavit on record and treated the same as an undertaking given to the Court. Accepting the said undertaking, liberty was restored to the accused and one of the condition of his release was, he shall abide by the terms reflected in an affidavit filed by him.

22 The respondent, Mr.Tyagi has failed to abide by the condition imposed upon him and is guilty of flagrant violation of the condition being of not intimidating the wife and her children and not entering into the jurisdiction of Bandra Police Station. He has also attempted to intimidate the witnesses and the entire material placed on record along with the application, justify me to exercise the jurisdiction conferred u/s.439(2) of Cr.P.C, as it can be clearly concluded that there is an attempt on part of the respondent to interfere with due course of administration of justice and he has abused the liberty conferred upon him. The subsequent supervening circumstances reflected through the application have persuaded me to have a reasonable belief that the liberty conferred has been misused, and if he is continued to be set free, it shall not be conducive to a fair trial and therefore, his freedom must be curtailed by cancelling the order, by which it was conferred to him.

23 Mr.Pandey has also taken out an Application No. 2538/2021 where he seek the following prayers :-

(1) That this Hon'ble Court be pleased to allow the Applicant to modify the undertaking/affidavit executed on 23/06/2021 in Criminal Bail Application No. 1979 of 2021 in C.R.No. 271 of 2020 registered at Worli Police Station for offences punishable under Sections 498(A), 307, 323, 504 and 506 of the Indian Penal Code, 1860 dated 16/07/2020.

(2) This Hon'ble Court be pleased to delete the bail condition in Order dated 23/06/2021 Paragraph 7, Point No.vii in Criminal Bail Application No. 1979 of 2021 in C.R.No.271 of 2020 registered at Worli Police Station for offences punishable under Sections 498(A), 307, 323, 504, 506 of the Indian Penal Code, 1860 dated 16/07/2020.

24 In the wake of the order passed by Justice Prakash Naik on 20/7/2022, the present application do not deserve any consideration and the same is rejected.

25 As a result IA No. 1806/2021 and IA No.3022/2021 are allowed. Bail granted to the applicant on 23/6/2021 vide BA No.1969/2021 is cancelled”.

The applicant is granted time of four weeks to surrender before the Investigating Officer from the date of uploading of this order”

In case of failure to surrender, the applicant shall be arrested and confined to judicial custody.

(SMT. BHARATI DANGRE, J.)