

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

CRIMINAL APPLICATION NO. 391 OF 2018
WITH
INTERIM APPLICATION NO. 1219 OF 2019
IN
APPLICATION NO. 391 OF 2018

Prakash Yashwant Naik

..Applicant
(First Informant)

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Raja Thakur, Sr. Advocate A/W. Akash Kavade A/W. Shekhar Ingawale i/b. M/s. Smita Gaidhani for the Applicant.

Mrs. A.A.Takalkar, APP for the State.

Dr. Uday Warunjikar a/w. Sonali Chavan for the Respondent Nos.2 to 5.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 29th MARCH, 2022.**

P.C.

1. This is an application for bail filed under Section 439 (2) of Cr.P.C. for cancellation of bail granted by the learned Addl. Sessions Judge, Vasai vide order dated 29.06.2018.

2. Heard Shri Thakur, learned Sr. Counsel for the Applicant, Mrs. Takalkar, learned APP for the State and Dr. Warunjikar, learned Counsel for the Respondent Nos.2, 3, 4 and 5. I have perused the records and considered the submissions advanced by the learned Counsel for the

respective parties.

3. At the outset, it may be mentioned that bail cannot be cancelled in a casual or mechanical manner. It is well settled that parameters for grant of bail are entirely different from cancellation of bail. In ***Myakala Dharmarajam and ors. v/s. The State of Telangana and anr. (2020) 2 SCC 743***, the Apex Court has observed thus :-

“ 6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7. In *Raghubir Singh v. State of Bihar* this Court held 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 above grounds are illustrative and not exhaustive. It must also be remembered 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.

8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in canceling the bail. ”

4. In *Prashant Singh Rajput vs. State of Madhya Pradesh AIR 2021*

SCC 5004 the Honourable Supreme Court has reiterated that :-

“In a recent judgment of a two Judge Bench of this Court in Mahipal (supra), this Court noted the difference in the approach that this Court must adopt while considering a challenge to an order which has granted bail and an application for canceling the bail granted. The Court held:

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an

application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]: (2015 AIR SCW 441), the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] . In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held: (Neeru Yadav case [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into

consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a PART D case of the second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment...” (emphasis supplied)

5. In the instant case, the bail is sought to be canceled on the ground

that the order of bail is perverse, illegal and unjustified. In this regards, it is pertinent to note that the dispute is in respect of property under Survey No.12/2. 89/1 and 103/1 which was originally owned by Kasha Vansha Patil. The Appellants had purchased the said land from Prema Kamat and others, the successors of Kasha Patil. Subsequently, the sisters of Kasha had filed an application before the Tahsildar alleging that the land belongs to Tribal community and should be returned to the owners. The Tahsildar allowed the said application and ordered return of the property to the original owners. The said order is stayed in Appeal REV/TRBV/374-A/2001 which is pending before the Maharashtra Revenue Tribunal.

6. The Applicant-Complainant also challenged the Caste Certificate of the sisters of Kasha Patil in Writ Petition No. 2195 of 2010, which is pending before this Court. The Applicant-Complainant lodged the FIR alleging that the sisters of Kasha Patil had entered into a back dated Agreement for Sale with Respondent No.2 in respect of sale of the said property. The Applicant-Complainant alleged that the said Agreement dated 14.12.2001 was in fact executed in the year 2010. It is alleged that the stamp paper as well as the signature and seal of notary are forged. It is further stated that Kashinath Vansha Patil, who is one of the vendors had

already expired on the date of execution of the said agreement and that his thumb impression is also forged.

7. It is to be noted that the Respondent No.2 Attubai had filed a suit against the sisters of Kasha Patil being Civil Suit No.140 of 2010, for specific performance of the Agreement to Sale. The parties arrived at compromise and the suit was being decreed on 25.2.2011. Subsequent to the said decree, Respondent No.2 Attubai has sold the property to M/s. Sakib K. Infrastructure India Pvt. Ltd. , of which Respondent No.3 is one of the Directors. Said Attubai had also filed suit No.120 of 2014 alleging that said Sakib K. Infrastructure India Pvt. Ltd., had not paid the consideration. The said suit was also compromised on 13.12.2014. It is stated that both these decrees in Civil Suit Nos.130 of 2010 and Civil Suit No.120 of 2014 are challenged in Civil Suit No.124 of 2018. It is under these circumstances, that the learned Judge has held that there is Civil Dispute between the parties as regards the said property.

8. The records indicate that the Investigating Agency had sent the document dated 14.12.2001 for expert opinion. The opinion of State Examiner of Documents, C.I.D. as well as the opinion given by the Assistant Examiner, Forgery Detection Cell (India Securities Press) prima

facie reveals that the stamp paper is genuine, but the same has been tampered with. In the sense, the original printed design and denomination has been scrubbed off, and it is reprinted with design denomination of Rs.100. The learned Judge has held that the Respondent Nos.2 to 5 had not suppressed the material fact. It was held that their custodial interrogation was not necessary for the purpose of investigation.

9. The material on record prima facie indicates that the document in question was forged. The question however is whether the order can be said to be perverse for not granting custodial interrogation. In this regard it is to be noted that the investigation as regards the authenticity of the documents is already completed. The Applicants have been interrogated while they were granted interim bail by the Sessions Court and further pursuant to the order dated 10.3.2020 of this Court (Coram A.S.Gadkari, J.). The Applicants have reported to the investigating Officer as directed by this Court and they have been extensively interrogated. Under the circumstances, no case is made out for custodial interrogation. Till date, no chargesheet is filed, though the FIR was registered in the year 2017. No satisfactory explanation is coming forth for not filing the chargesheet till today.

10. It is stated that the Applicants are involved in committing similar crimes, details of which are given in the say filed by the Investigating Officer before the learned Judge, The Investigating Officer has not been able to state whether these crimes registered in 2011 and 2016 were investigated and culminated in filing of chargesheet and further the outcome of the chargesheet. Under the circumstances, the mere fact that a crime was registered, against the Applicant in the past cannot be the ground for rejecting the bail or canceling the bail.

11. Having gone through the records, in my considered view, the order is not perverse. No case is made out for cancellation of bail. Hence, the Application is dismissed.

. Interim Application stands disposed of in view of dismissal of the Criminal Application.

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(ANUJA PRABHUDESSAI, J.)