

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

**CRIMINAL WRIT PETITION NO. 6265 OF 2021**

Smita Macchindra Deokar ...Petitioner  
Versus  
State Of Maharashtra And Anr. ...Respondents

....

Mr. Sanjeev Kadam i/by Mr. Aashish Satpute, Advocate for the Petitioner.

Mr. Vijay S. Kurlle, Advocate for the Respondent No.2.

Mr. H. J. Dedhia, APP for the Respondent – State.

Mr. Ravindra Avhad (P.I.) Borivali Police Station, Present.

**CORAM : PRAKASH D. NAIK, J.**  
**DATE : 22<sup>nd</sup> FEBRUARY, 2022.**

**PER COURT:**

1. The petitioner has challenged the order dated 8<sup>th</sup> December, 2021 passed by the Sessions Court in Criminal Miscellaneous Application No.317 of 2020 cancelling bail granted to the petitioner by the Court of learned Metropolitan Magistrate, 24<sup>th</sup> Court, Borivali, Mumbai vide Order dated 11<sup>th</sup> May, 2020 in C.C. No. 646/PW/2020.

2. The petitioner was arrested on 5<sup>th</sup> December, 2019 in connection with C.R. No.670 of 2019 registered with Borivali Police Station, Mumbai on 2<sup>nd</sup> December, 2019 for offences punishable under Sections 420, 465, 467, 468, 471, 504, 506(2) r/w Section 34 of Indian Penal Code (for short 'IPC').

**3.** The First Information Report (for short 'FIR') was registered by respondent No.2 vide C.R. No.670 of 2019. It is alleged that he is social worker of Jain Samaj. The office of Jain Samaj is situated at Aradhana Bhavan Mercury-B Cooperative Housing Society Ltd. Plot No.478 & 488, Siddhivinayak complex, Chikuwadi, Borivali West, Mumbai. Mercury Bungalow was sold to Soubhagya Vardhak Chikuwadi Shwetambar Murtipujak Tapgaccha Jain Sangh on 29<sup>th</sup> November, 2017 by Smt. Meenakshi Trivedi and Dipen Trivedi by registered Sale Deed since then the Bungalow is in possession of Jain Sangha. The Complainant is authorised to look after the Bungalow. Religious programmes are conducted by Jain Sangha at the said premises. Mandar Borkar and Smita Deokar frequently visits the Bungalow and represent that Bungalow should be vacated since it has been purchased by them. They were informed that Bungalow has been purchased by executing registered Sale Deed. The said persons installed food stall near Bungalow. Complaint was made to Municipal Corporation and the stall is removed. Thereafter, the above persons threatened the complainant to vacate the premises or else he would face consequences. Complainant sought information through RTI from

corporation. It was informed that water meter is in the name of Kirit Mehta and Smita Deokar has submitted application for operation of water meter. Copy of MOU on stamp paper of Rs.100 was also received. The document was notarized on 27<sup>th</sup> May, 2015. There were signatures of Minakshi Trivedi, Dipen Trivedi, Mandar Borkar, Smita Borkar. The MOU was shown to Divesh Trivedi. He denied signature and execution of document with said persons. It is fabricated document. On 21<sup>st</sup> September, 2019 complainant was threatened by Mandar Borkar. The accused have acted in connivance with each other and fabricated MOU on stamp paper of Rs.100/- to show that Bungalow was purchased for Rs.1,75,00,000/-. Signatures of Minakshi Trivedi and Dipen Trivedi were forged. Simta Deokar submitted application to Corporation for transferring Water Meter to her name.

**4.** The petitioner preferred application for bail before the Court of learned Metropolitan Magistrate. The said application was allowed by order dated 11<sup>th</sup> May, 2020. The petitioner was directed to be released on bail. The respondent No.2 preferred application for cancellation of bail before the Sessions Court. The said application was allowed by order dated 8<sup>th</sup> December, 2021 and bail granted to the petitioner

has been cancelled. Hence, the petitioner has preferred this petition before this Court challenging the order dated 8<sup>th</sup> December, 2021.

**5.** Learned counsel for the petitioner submitted that the petitioner was arrested on 5<sup>th</sup> December, 2019. Investigation was completed and the charge-sheet was filed. Petitioner was in custody for substantial period. The learned Magistrate while granting bail has taken into consideration the fact that the petitioner is entitled for bail in accordance with Section 437(6) of Cr.P.C. She is a woman. Guidelines were issued pursuant to the directions of the Apex Court on account of spread of pandemic of Covid-19, to consider grant of bail. Charge-sheet was filed. Investigation is completed. Thus, there was no infirmity in the order passed by the learned Magistrate. The learned Sessions Judge has however set aside the order of bail on erroneous consideration. On account of pandemic there was communication gap in giving instructions about the rejection of previous applications. That cannot be ground for cancelling bail granted to the petitioner. There are no supervening circumstances to cancel bail.

**6.** Learned counsel for the petitioner has relied upon

the following decisions.

- i. Mohan Singh V/s. Union Territory Chandigarh (1978) 2 SCC 366.
- ii. Pankaj Jivdhar Katke V/s. State of Maharashtra, AIR ONLINE 2019 BOM 66.
- iii. Sonal Shrikant Dhage V/s. Prashant Gajanan Dhage, AIR ONLINE 2021 BOM 3717.

7. Learned APP submitted that the offence is of serious nature. There was suppression of vital facts by the petitioner. The accused were involved in fabricating the documents. The accused had claimed to be owner of property worth Rs. 1 Crore, 75 Lakhs. There are criminal antecedents against the petitioner. Proper hearing was not given to prosecution. The learned Magistrate had misread Section 437(6) of Cr.P.C. The applicant was involved with the co-accused against whom several cases were registered.

8. Learned counsel for respondent No.2 submitted that the offence is of serious nature. The petitioner has suppressed vital facts. The power under Section 437(6) of

Cr.P.C. were wrongly exercised by the learned Magistrate. Repeated threats were issued to the complainant. The previous application preferred by the petitioner before the Sessions Court were rejected on 9<sup>th</sup> January, 2020 and 2<sup>nd</sup> March, 2020. The said fact was deliberately suppressed by Petitioner. The bail under the provisions of Section 437(6) of Cr.P.C. cannot be granted as a matter of course. The petitioner had preferred an application for bail before this Court viz. Criminal Bail Application No.850 of 2020 which was withdrawn on 16<sup>th</sup> February, 2021 by stating that applicant had preferred application for bail before the Sessions Court which has been allowed. However, no such application was preferred before the Sessions Court at that point of time. Thus pendency of application for bail before this Court was suppressed while pursuing application before the Court of Magistrate. The application for bail was pending before this Court while the application was argued and granted by learned Magistrate on 11<sup>th</sup> May, 2020. After grant of bail, application pending before this Court has been withdrawn. The Petitioner had preferred application for anticipatory bail before this Court in C.R. No.115 of 2018 registered with Borivali Police Station, under Sections 143, 147, 148, 149, 307, 342, 427, and 120 B of IPC. The said

application was rejected by this Court by order dated 23<sup>rd</sup> March, 2018. In the said order the Court has considered role of Petitioner and it is observed that, the Petitioner being practicing Advocate, has exceeded her professional obligations and has entered into arena of criminality thereby conspiring with co-accused Mandar Borkar, a history sheeter on the record of the Police, with a view to grab the property of Kora Kendra and/or to disturb the lawful possession of its owners. There is genuineness in the allegations against her. The present offence is of serious nature. False document is created by accused in connivance with each other. Charge-sheet shows deep involvement of Petitioner. The Court did not take into consideration antecedents of Petitioner. After release on bail Petitioner again sent her hirelings to commit Criminal trespass into property and assaulted inmates for which C.R. No. 1127 of 2020 is registered against hirelings on 19<sup>th</sup> November, 2020. False cases were registered against Respondent No.2. The complainant had made several complaints about threats received from accused. The petitioner has connived with co-accused Mandar Borkar, presently involved in MCOC case against whom several cases are registered and Respondent was intimidated. During the pendency of this petition and after interim relief was in

operation, the petitioner had threatened the Advocate representing respondent No.2. Complaint has been filed by the petitioner against the Advocate for Respondent No.2 with Police and the Advocate was called for enquiry on 17<sup>th</sup> February, 2022 by Police Inspector, Crime Branch, Kandivali. Learned Advocate produced copy of Notice dated 15<sup>th</sup> February, 2022 and copy of complaint dated 1<sup>st</sup> February, 2022 lodged by Petitioner alleging threats by complainant in the present case and Advocate for Respondent No.2. It is submitted inform the Petitioner had been sending messages to Advocate for Respondent No.2.

9. Learned counsel for respondent relied upon the decision of the Apex Court in the case Jayaben V/s. Tejas Kanubhai Zala and Another 2020 SCC OnLine SC 24.

10. In rejoinder learned counsel for the petitioner submitted on instructions that no such threats were issued to the advocate for the respondent. The last message which was not the threat was sent to the advocate for respondent No.2 in November 2021.

11. Having heard both the sides, I have also perused the documents on record. The FIR was registered on 1<sup>st</sup> December, 2019. The petitioner had preferred an application

for bail before the learned Magistrate which has been allowed by order dated 11<sup>th</sup> May, 2020. The order passed by the learned Magistrate indicate that bail was granted on the ground that there was pandemic situation. The accused is entitled for bail by virtue of sub Section 6 of Section 437 of Cr.P.C. The accused is a lady. There is no possibility to conclude the trial within short period. The accused has children. From the tenor of this order it is apparent that the learned Magistrate was not appraised of the fact that the earlier application preferred by the petitioner for bail before the Court of Sessions and order passed therein rejecting the applications were brought to the notice of said Court. Section 437(6) of Cr.P.C. relates to grant of bail if in any case triable by Magistrate, where the trial of person accused of any non bailable offence is not concluded within period of Sixty days from the first date fixed for taking evidence in the case, such person shall if he is in custody during the whole of said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing the Magistrate otherwise directs. The situation to grant bail in accordance with aforesaid provision was not existing the date of order. The court can refuse to grant bail even in such eventuality for reasons to be recorded in writing. Although

High Power Committee guidelines were issued regarding grant of bail, it is not expected that Courts would grant bail mechanically.

**12.** The petitioner had preferred an application for bail before the Court of Sessions which has been rejected by order dated 9<sup>th</sup> January, 2020. Thereafter another application was preferred before the Sessions Court which was also rejected by order dated 2<sup>nd</sup> March, 2020. While rejecting application by order dated 9<sup>th</sup> January, 2020, it was observed that punishment for Section 467 of IPC which is prima facie attracted is punishable with life imprisonment. The co-accused Mandar Borkar is absconding. By order dated 2<sup>nd</sup> March, 2020 it is observed that, there are three offences registered against the Petitioner. The first crime is C.R. No.114 of 2018 registered under Sections 143, 144, 147, 148, 149, 447, 506(ii) of IPC. Second offence is registered under Section 307 of IPC. Third offence under Section 195 A of IPC. Although the accused is Advocate, there cases are registered against her. She has good relations with wanted accused, Mandar Borkar who is wanted. He has the history of 19 Criminal Cases. Out of which three cases are attempt to Murder. More than Seven cases are under Sections 385, 386,

387 of IPC. When there is strong material against the accused, and the accusations are fortified by filing of charge-sheet, and prima facie appears that wanted accused is not found but trying to threaten prosecution witnesses, it has to be gathered that release of accused on bail may be fatal to prosecution case. Thus, this order was passed after filing of charge-sheet. The annexures to this Petition also indicate that even after the aforesaid order the learned Metropolitan Magistrate 26<sup>th</sup> Court, Borivali rejected application for bail by order dated 31<sup>st</sup> March, 2020, on the ground that considering nature and seriousness of the offence, this accused is not entitled for bail.

**13.** The learned Sessions Judge while cancelling bail granted to the petitioner has observed that while preferring an application before the learned Magistrate which was allowed on 11<sup>th</sup> May, 2020, impression was given that Court of learned Magistrate rejected the Bail Application No.284 of 2020 on 2<sup>nd</sup> March, 2020. However, the bail application was rejected by the Sessions Court, the accused had suppressed the fact that the application was rejected by the Sessions Court on 2<sup>nd</sup> March, 2020. The petitioner had also preferred an application before the High Court but the Bail Application

No.852 of 2020 and the said application was pending when the application was moved before the learned Magistrate. The application before the High Court was thereafter withdrawn by submitting that the application is pending before the Sessions Court. It was further observed that when the application was filed before the Magistrate which was suppressed by the accused that the application for bail is pending before the High Court. By which the Court of learned Magistrate it was contended that the accused is suffering from hypochondria and the trial is not concluded in 60 days that the accused is entitled for bail under Section 437(6) of Cr.P.C. Although it was not allowed the Court while granting bail has considered the fact that the petitioner is required to take care of the children. The first date of hearing was fixed for evidence and considering the dates fixed for evidence, the accused were not entitled for bail under Section 436(6) of Cr.P.C. Thus, it is apparent that the orders passed by the Sessions Court were obviously not brought to the notice of the learned Magistrate. It is pertinent to note that the order dated 2<sup>nd</sup> March, 2020 was passed by the Sessions Court after filing of charge-sheet. In the reply filed by the respondent No.2 the complaints of threats lodged against the accused are placed on record. It is also pertinent to note that there are

three criminal antecedents against the petitioner which are as follows :-

- i. C.R. No.114 of 2014 under Sections 143, 144, 147, 148, 149, 447, 506(2) of IPC.
- ii. C.R. No.115 of 2018 under Sections 143, 144, 147, 148, 149, 342, 427, 307, 120-B of IPC.
- iii. C.R. No.245 of 2018 under Section 195A of IPC.
- iv. C.R. No. 670 of 2019 under Sections 420, 465, 467, 468, 471, 504, 506(2) r/w Section 34 of IPC registered with Borivali Police Station, Mumbai.
- v. Chapter Case No.10 of 2018 initiated by Borivali Police Station.

**14.** The respondent No.2 has also contended that the co-accused Mandar Borkar is involved in 21 cases and provisions of MCOC were invoked against him.

**15.** In the case of Mohan Singh, Advocate V/s. Union Territory (supra) the Apex Court had observed that, bail was granted by the Sessions Court which has been cancelled by the High Court on the ground that the accused had

simultaneously moved for bail in the Sessions Court as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. The High Court then observed that the party was not straightforward in his dealing with the Court and the consequence was that the bail already granted was reversed. It is pertinent to note that in the present case it is not merely the fact the application was preferred before the High Court when the application was filed before the Sessions Court. In the present case, two applications preferred before the Sessions Court were rejected on merits and at the same point of time, the application preferred before the High Court was pending. This fact were suppressed when the application was moved before the Sessions Court. In the case of Pankaj Jivdhar Katke V/s State of Maharashtra (supra) this Court had considered the parameters for cancellation of bail once granted. This Court has referred to the decision in the case of Kanwar Singh Meena V/s. State of Rajasthan (2012) 12 SCC 180 wherein by referring to several earlier decisions of the Supreme Court, the principles have been succinctly laid down. It was observed that while cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with Court are whether are accused is likely to tamper

with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that it is not all. The High Court or the Sessions Court can cancel bail even 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 cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. In the case of Sonal Shrikant Dhage V/s. Prashant Gajanan Dhage (supra) this Court has referred to the decision of the Apex Court in the case of Raghubir Singh

V/s. State of Bihar and considered the parameters for cancelling bail and the circumstances under which bail once granted can be cancelled. In the case of Jayaben V/s. Tejas Kanubhai Zala and Anr. (supra) has observed that there are different considerations while considering the application for cancellation of bail for breach of conditions etc. and while considering an order passed by the Court releasing the accused on bail. Once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and it was also observed that by not filing the appeals by the state against the impugned judgments and order releasing the accused on bail in such a serious matter, the State has failed to protect the rights of the victim.

16. Learned Sessions Judge has rightly exercised powers under Section 439(2) of Cr.P.C. and cancelled bail granted to the petitioner. I do not find any infirmity in the impugned order, no case is made out to entertain and grant relief prayed in this petition.

17. Hence, I pass the following order :

### **ORDER**

I. Writ Petition No. 6265 of 2021 is rejected and

stands disposed of.

**II.** At this Stage learned counsel for the petitioner submits that the Petitioner intends to challenge this order before Apex Court and interim relief granted by this Court by order dated 22<sup>nd</sup> December, 2021 may be extended by four weeks.

**III.** The prayer for extension of interim relief has been opposed by learned APP as well as learned counsel for respondent No.2. Since the petitioner intends to challenge this order before the Apex Court, interim relief is extended for two weeks from the date of uploading of this order.

**(PRAKASH D. NAIK, J.)**