

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1340 of 2021

Nooruddin Mohd. Hussain Sayyed ...Applicant
vs.

The State of Maharashtra ...Respondent

Mr. Rajendra S. Bidkar, for the Applicant.
Mr. S.R. Aagarkar, APP for State.
Atmaram T. Kaware, ASI 24748 Wadala T T police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 29, 2022

P.C.:

1. Heard the learned counsel for the Applicant.
2. The Applicant - Original Accused No.2 in C.R. No. 43 of 2019 registered with Wadala T T Police Station, for the offences punishable under Sections 8(c), 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, takes exception to an order passed by the the learned Special Judge, City Civil and Sessions Court, Greater Bombay in MCOC Misc. No. 1020 of 2019 whereby the learned Judge cancelled the bail granted to the Applicant, by learned NDPS Special Judge, in bail Application No. 43 of 2019 and directed the Applicant to surrender within 15 days from the date of the said order.
3. The said order came to be passed on an application filed

by the special Public Prosecutor asserting that the provisions of Maharashtra Control of Organised Crime Act 1999 (for short "MCOC Act"), were made applicable in relation to Cr. No. 43 of 2019. Since the provisions of MCOC Act, 1999 were made applicable, the bar to release the Applicant accused on bail under Section 21 of the Act came into play and, therefore, the bail granted to the Applicant accused was required to be cancelled. The learned Special Judge observed that, sufficient grounds were made out for cancellation of bail as *prima facie* the provisions of MCOC Act were attracted and the competent authority had given prior approval under Section 23(1)(a) of the MCOC Act, 1999.

4. The learned counsel for the Applicant submits that, in the intervening period, there have been developments which bear upon the validity of the order cancelling the bail and directing the Applicant to surrender. The learned counsel invited the attention of the court to a copy of the order dated 7th April 2022. It is recorded that the competent authority has not granted the previous sanction under Section 23(2) of the MCOC Act 1999. The learned Special Judge, therefore, directed that the matter be remitted back to the N.D.P.S. court.

5. Mr. Aagarkar, learned APP, on instructions of the officer,

present in the court, submits that the competent authority has not granted sanction as envisaged by Section 23(2) of the Act. Resultantly, the learned Special Judge was justified in remitting the matter to the NDPS Court.

6. In the backdrop of the aforesaid facts, indisputably, the Applicant - Accused No.2 was on bail when impugned order was passed by the learned Special Judge. In fact, the learned Special Judge has cancelled the bail granted to the accused No.2 - Applicant in BA No. 440 of 2019 and directed to surrender only on the ground of invocation of MCOC Act, 1999. Once the competent authority declines to grant sanction under Section 23(2) of the MCOC Act, 1999, the very foundation of the cancellation of the bail gets dismantled. The necessary corollary is that bail granted by the NDPS Court in B.A. No. 440 of 2019 stands revived.

7. Hence following order.

ORDER

(i) The impugned order cancelling the bail of the Applicant stands quashed and set aside.

(ii) The order passed by the NDPS Court in bail Application No. 440 of 2019 stands restored.

(iii) By way of abundant caution it is declared the Applicant need not surrender and seek fresh bail.

(N. J. JAMADAR, J.)