

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 310 OF 2023

**SUDEEP RAMESH MAHORE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. J. Salunke, Advocate h/f Mr. A. P. Raka, Advocate for the petitioners
Mr. V. S. Badakh, APP for the respondent/State
Mr. S. S. Thombre, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 19/10/2023
PRONOUNCED ON : 25/10/2023

ORDER :-

1. This petition takes exception to the order dated 17th February, 2023 passed by Addl. Sessions Judge, Aurangabad in Criminal M.A. No. 16 of 2023 whereby the order dated 21st November, 2022 passed in Criminal Bail Application No. 2168 of 2022, granting anticipatory bail to the petitioners in connection with Crime No. 195/2022 registered with Kranti Chowk Police Station, Aurangabad was cancelled.

2. Respondent lodged first information report on 12th August, 2022 with Kranti Chowk Police Station, Aurangabad against the accused persons including present petitioners for the offences punishable under Sections 420, 465, 468, 471 read with 34 of IPC. In connection with

said crime petitioners filed application for anticipatory bail bearing No. 2168 of 2022. The said application was allowed by order dated 21st November, 2022 passed by Addl. Sessions Judge, Aurangabad. The respondent/ original informant being aggrieved by the said grant of pre arrest bail filed an application under Section 439(2) of Cr.P.C. for cancellation of bail so granted. Cri. M.A. No. 16 of 2023 was filed before the Addl. Sessions Judge. The learned Judge by passing impugned order dated 17th February, 2023 allowed the said application and cancelled the bail granted by order dated 21st November, 2022.

3. Learned counsel for the petitioners submits that the bail granted by the learned Addl. Sessions Judge was not solely on the ground of parity however, it is essentially allowed on merit. It is his further contention that it was not open for the informant to raise objection to the grant of bail before the same Court and if the informant was aggrieved by the said order, the same ought to have been challenged before the higher Court. By drawing attention of the Court to the observations made in the order of grant of bail dated 17th February, 2022 it is submitted that this can never be said to be a case of misrepresentation or fraud upon the Court. He also argued that even on the merit the application for grant of bail would have been rightly

allowed by the Addl. Sessions Judge. It is submitted that the law is settled on the point that the bail was granted cannot be ordinarily cancelled. To support his submission he placed reliance on following judgment:

- (a) State of Maharashtra and others versus Vashishta Rambhau Andhale, (2007) 7 SCC 341,*
- (b) Dolat Ram and Others versus State of Haryana, (1995) 1 SCC 349,*
- (c) Madhav Premising Rathod Vs. State of Maharashtra and another, 2014(2), Mh.L.J, (Cri.) 214.*

4. Learned counsel for the informant and learned APP opposed the application by contending that once the order is found to have been obtained by fraud or misrepresentation, such order cannot sustain. It is submitted that the Addl. Sessions Judge has categorically held that the anticipatory bail was granted on parity and since application of the co-accused Sandip was already withdrawn on 26th September, 2022, it cannot be even claimed that there was any mistake on the part of the learned counsel for the applicants/petitioners herein in making the said statement. Thus, according to them since order is obtained by fraud/ misrepresentation it is rightly cancelled order of grant of anticipatory bail.

5. There cannot be any dispute with regard to the preposition

sought to be canvassed by the learned counsel for the petitioners that the bail once granted cannot be interfered with or cancelled ordinarily. However, at the same time it cannot be ignored that there is no complete bar for cancellation bail once granted. No doubt it was not open for the informant to challenge the order of grant of bail on the merits of the case before same Court. Thus, the grounds raised before the Addl. Sessions Judge by the informant touching to the merit of the case cannot be considered. The only ground available for the informant before Sessions Court is about obtainment of order by misrepresentation/ fraud. In first case for the purpose of challenging the order of merit, an application is required to be made before the higher Court and not before the same Court. However, when it comes to an allegation of fraud played upon the court, it is absolutely necessary to approach the same Court first as only that Court would be in a position to appreciate and record the finding upon these allegations.

6. In the instant case perusal of the impugned order shows that the Court was under wrong impression that the bail applications of both co-accused were granted by the High Court. It is also recorded in impugned order that considering the bail granted by this Court on the

ground of parity was on wrong assumption that the co-accused are granted anticipatory bail and therefore, the order is required to be revoked. The contention of the learned counsel for the petitioner that the order of bail was granted on merit as well as on parity does not find place in the impugned order passed by the Addl. Sessions Judge. The judge who had granted anticipatory bail had cancelled the said bail with observations that the previous order was granted on assumption of grant of anticipatory bail to the co-accused and the bail is on parity. In such situation it is not open for this court to replace the said findings to hold that the order of pre arrest bail was also on merit. Apart from this even perusal of order dated 21st November, 2022 whereby the bail was granted also does not indicate clearly that the bail granted was on merit as well as on parity. In absence of any such specific observation therein, it is difficult for this Court to accept the contention of the learned counsel for the petitioner that the bail was granted on merit as well.

7. Purity of process of law is of paramount importance. Any order obtained by misrepresentation or fraud is nullity. Any amount of justification for the grant of anticipatory bail even having regard to the merit of the case is not sufficient to maintain such order, once there is

fraud/ misrepresentation on the Court. Though there is an embargo in cancellation of bail ordinarily, the case wherein the order is obtained by fraud/ misrepresentation, cancellation of bail is imperative. This Court therefore finds no reason or justification for causing interference in the impugned order. Hence petition stands dismissed.

(R. M. JOSHI, J.)

Later on.

1. Learned counsel for the petitioners at this stage seeks extension of interim relief for a period of three weeks.
2. Learned counsel for the informant as well as learned APP opposed the said request.
3. Since the interim protection is in force from 28th February, 2023, the same is extended for a period of three weeks from today.

(R. M. JOSHI, J.)

ssp