

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

CRIMINAL WRIT PETITION NO.323 OF 2023

**NISAR BEG AZIZ BEG MIRZA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. M. Kamble, Advocate for the petitioner
Mr. G. O. Wattamwar, APP for the respondent/State
Mr. Vikrant Palshikar, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 31st JULY, 2023

P.C. :-

1. This Court is called upon to decide an issue as to whether the accused who misrepresents before the Court is entitled to maintain obtain order of bail obtained on such misrepresentation.

2. The present petition is an accused in Crime No. 134/0022 registered with Phulambri Police Station for the offences punishable under Sections 420, 504, 506 and 34 of IPC.

3. The petitioner had filed application for anticipatory bail before the Sessions Judge which came to be rejected and thereafter Anticipatory Bail Application No. 739/2021 came to be filed. During the pendency of the said application undertaking was given to the Court for deposit of the amount of Rs.12 lakhs. Eventually the said application was dismissed by order dated 26/10/2021. Thereafter charge-sheet is filed. An application was moved before the Trial Court for grant of bail. Perusal

of the order passed by the learned Trial Court shows that the bail was granted only for the reason that High Court had granted anticipatory bail to the applicant. Since the said order was passed on the basis of misrepresentation of the fact the original complainant challenged this order before the learned Addl. Sessions Judge.

4. Learned Addl. Sessions Judge after taking into account the facts and circumstances of the case as cancelled the bail granted by order dated 13/05/2022 in Criminal Case No. 104/2022.

5. Being aggrieved by the said order present petition has been filed. Learned counsel for the petitioner claims that the petitioner has not made any misrepresentation to the learned Trial Court. To support the said submission he placed reliance on the application filed before the Trial Court for grant of bail. By referring to the judgment of Hon'ble Apex Court in case of ***Dolat Ram and Others Versus State of Haryana, (1995) 1 SCC 349***, it is contended that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted.

6. No doubt the aforesaid observations made by the Hon'ble Apex Court must be complied with and whenever there is cogent and overwhelming circumstances which call for the cancellation of bail, such order must necessarily be passed. In the present case, the perusal of the order dated 26/10/2021 passed by this Court in ABA No. 739/2021 clearly

shows that the petitioner herein did not approach the High Court while filing the said application with clean hands. It is also recorded the petitioner herein has sought time by making false statements about the deposit of amount and also sought extension of time on that ground. On this ground amongst other his application for anticipatory bail was rejected. Thereafter charge-sheet came to be filed. The petitioner herein appeared before the Trial Court through his Advocate. Perusal of the order passed of granting bail clearly indicates that the said bail was obtained only on the basis of submission that the High Court had granted anticipatory bail to the accused. In the said order clearly indicates so. It is thus abundantly clear that order of bail was not passed on merit but on the misconception of the fact about passing of order of anticipatory bail in favour of the accused by this Court. The petitioner therefore has suppressed the true facts at every stage of the bail proceedings. Petitioner having obtained to the order by playing fraud upon the Court, such order is rightly set aside by the learned Addl. Sessions Judge and bail granted him is cancelled. In such circumstances, there is no merit in the petition, petition stands dismissed.

(R. M. JOSHI, J.)

ssp