

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

**CRIMINAL APPLICATION NO.1182 OF 2023
IN
APPLICATION FOR CANCELLATION OF BAIL NO.173 OF 2021**

Ganesh S/o Balaji Sidalwad,
Age-22 years, Occu:Education/Student,
R/o-Bhosi, Tq-Bhokar, District-Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Bhokar,
District-Nanded,
- 2) Abhijeet S/o Prabhakar Kalyankar,
Age-26 years, Occu:Education/Student,
R/o-Bhosi, Tq-Bhokar,
District-Nanded.

...RESPONDENTS

...
Mr.S.B. Bhapkar Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1 – State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 28th APRIL, 2023

ORDER :

1. Present Application has been filed under Section 439 and

482 of the Code of Criminal Procedure, with following prayers:-

" A) This Criminal Application may kindly be allowed.

B) Call for Record and proceeding.

C) To release the applicant on bail in Crime No.289/2020 registered at Police Station, Bhokar, District Nanded U/sec.302 and 201 of Indian Penal Code by modifying / recalling the order dated 12.01.2022 passed by this Hon'ble Court in ACB No.173/2021 by restoring the order dated 27.01.2021 passed by this Hon'ble Court in Bail Application No.1499/2020,

D) Applicant is in jail therefore, affidavit of applicant may kindly be dispensed with.

E) Any other suitable and equitable relief may kindly be granted in favour of the Applicant."

2. Heard learned Advocate Mr. Bhapkar appearing for the applicant and learned APP Mr. Phule appearing for the State. It is not even necessary to issue notice to respondent No.2.

3. Applicant is arrayed as an accused in Crime No.289 of 2020 registered with Police Station, Bhokar, District-Nanded for the offence punishable under Sections 302, 201 of the Indian Penal Code on the basis of First Information Report lodged by respondent No.2. The applicant came to be arrested on 8th July

2020. After the investigation, the charge-sheet came to be filed before the learned Judicial Magistrate First Class. The applicant had preferred bail application under Section 439 of the Code of Criminal Procedure before this Court bearing Bail Application No.1499 of 2020 and it came to be allowed on 27th January 2021. Certain conditions were imposed while releasing the applicant on bail. However, subsequently respondent No.2 moved an application for cancellation of bail i.e. Application for Cancellation of Bail No.173 of 2021 before this Court alleging that the applicant has committed breach of the conditions imposed to the bail application. It was found that the applicant has indulged in offence under Section 3 punishable under Section 25 of the Indian Arms Act, bearing Crime No.285 of 2021 registered with Bhagya Nagar Police Station, Nanded. Said Application for Cancellation of Bail came to be allowed by this Court on 12th January 2022. The applicant was directed to surrender before the jail authorities on 17th January 2022 before 11.00 a.m. It is contended by the applicant that he accordingly surrendered before the jail authorities on 17th January 2022.

4. Applicant then contends that now the trial has commenced and some witnesses have been examined by the prosecution before the trial Court. However, the trial is not likely to conclude

in near future and therefore, it would be just and proper to release the applicant on bail so that he can defend and represent himself in the case properly. Applicant further contends that when this Court had allowed the bail application, it was found that there was no direct evidence against the applicant and therefore, it is necessary to recall the order passed by this Court on 12th January 2022.

5. It is to be noted that the learned Advocate Mr. Bhapkar appearing for the applicant has even argued the same points which have been written in the Application. However, still when specifically asked, as to why the order needs to be recalled, he submits that applicant wants to defend and represent himself in the case properly . This cannot be the proper reason to recall the order. This Court had granted bail to the applicant by imposing certain conditions. Thereafter when application for cancellation of bail was filed, applicant was heard by this Court through his Advocate. A detailed order has been passed by this Court on 12th January 2022 cancelling the bail that was granted to the applicant. Applicant has not challenged the said order passed by this Court in Application for Cancellation of Bail No.173 of 2021 before the higher authority. Now under the guise of modification to the said order, he wants recalling of the order dated 12th

January 2022 and restoration of the order dated 27th January 2021. In fact there is delay of more than one year and there is no application for condonation of delay. There is no reason mentioned in the Application as to why such application is filed after a period of one year when the applicant had not challenged the order dated 12th January 2022 but rather complied with it. Now applicant cannot, on some flimsy grounds, say that the said order should be recalled. The Application is absolutely not tenable and deserves to be rejected.

6. For the reasons stated above, the Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]