

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 775 OF 2023

Ramchandra Maruti Yedage ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr. A. S. More, Advocate for the Petitioner.

Mr. G. L. Deshpande, APP for Respondent – State.

CORAM : R.M. JOSHI, J.

DATE : JULY 05, 2023

ORDER

1. Judicial conduct is the very fiber on which the fabric of confidence of people on any justice delivery system largely depends. To ensure maintenance of faith in judicial system by the public at large, the Courts need to be transparent and disciplined in the matter of dispensation of justice. The trial Courts are expected to maintain judicial propriety and ensure that there is no insubordination of Higher Court in any manner. The Lawyers and Public Prosecutors being officers of the Court also share equal responsibility to be honest and fair to the Courts and in no case involve themselves in suppression of facts before any

Court of law. Unfortunately, present case is an example as to how insubordination and judicial impropriety coupled with fraud upon Court by suppression of facts while obtaining order, could lead to miscarriage of justice.

2. This Petition in fact takes exception to the order passed below Exh. 55 on 30.05.2023 in Sessions Case No. 9/2021 by learned Sessions Judge, Osmanabad whereby surety was not accepted pursuant to the order passed of granting bail to the Petitioner / Accused, who is undergoing trial for offence punishable under Section 302 of IPC.

3. During the course of hearing of this Petition, it was noticed that this case involves serious issues like in subordination, judicial impropriety and suppression of facts while obtaining order dated 29.05.2023 in Sessions Case No. 09/2021 granting bail to the accused, and hence, *suo moto* cognizance thereof is taken by this Court. Pursuant thereto, notice was issued to the Petitioner calling upon to show cause as to why the said order shall not be set aside.

4. Heard learned Counsel for the Petitioner and learned APP. Considering the manner in which order in question is passed, this Court thought it fit to call record and proceedings in Sessions Case No. 09/2021 for perusal.

5. Petitioner is under trial prisoner and accused in Crime No. 360/2020 registered with Naldurg Police Station for the offence punishable under Sections 302, 504, 506 read with Section 34 of IPC. He preferred applications for bail, which came to be rejected by learned trial Court. Thereafter, Petitioner moved an application for bail before this Court being Criminal Application No. 359/2022. Coordinate bench of this Court by passing order dated 05.05.2022 rejected the said application with following directions:

“The learned Additional Sessions Judge-2, Osmanabad to expedite Sessions Case No. 9 of 2021 and dispose it of on merits as early as possible, preferably within eight months from the date of receipt of the writ from this Court. If at all the trial does not get over within eight months, then in that case liberty is granted to the applicant to approach this Court.”
(Emphasis supplied)

6. This order has attained finality as the same was not challenged before the Hon'ble Apex Court. It is thus clear from the said order that the liberty was granted to the Petitioner to approach this Court in the event trial does not get over within period of eight months and no discretion was left with the learned trial Court to grant bail to the Petitioner even if the trial does not get over within the stipulated period.

7. In this backdrop the learned Additional Sessions Judge passed order below Exh. 50 of 29th May, 2023 granting bail to the Petitioner. Record indicates that trial in Sessions Case was pending before District Judge – 3 and Additional Sessions Judge, Osmanabad. Petitioner/Accused however moved an application for bail under Section 439 of Cr.P.C vide Exh. 50 before Incharge Court. In the said application it is not specifically stated that liberty is granted to the accused to move an application for bail before High Court in the event trial is not completed in six months. Thus, there is apparent suppression of fact by Petitioner in order get order in his favour. This application is opposed by PP/APP by filing say at Exh.

51. However in that say also there is no specific statement in respect of the order of High Court. Thus, there is apparent suppression of facts by both sides.

9. However, order of grant of bail indicates that the learned Additional Sessions Judge had gone through the order passed by this Court on 05.05.2022 but learned Judge has completely overlooked direction that liberty was not given to move application for bail before the trial Court but it was only to be entertained by High Court. The order passed by the Incharge Special Judge, Osmanabad on the face of it shows that in utter disregard to the order passed by this Court bail application came to be entertained and allowed.

10. Apart from this, perusal of the record further indicates that the learned Judge who has passed this order was not seized with the said trial in Sessions Case No. 09/2021. An application came to be moved by accused before incharge Court on 17.05.2023. Roznama proceedings of Sessions Case No. 09/2021 shows that on 15.05.2023 the proceeding was adjourned to 23.05.2023. However, matter was taken on board before incharge

Court on 17.05.2023 and notice came to be issued to the prosecution. On 23.05.2023 say was filed by District Government Pleader on the bail application vide Exh. 51. On that day matter was adjourned to 05.06.2023 for recording evidence, as indicated in Roznama. But before that day it was again taken on board on 29.05.2023 and order in question came to be passed.

11. Without expressing any view or opinion in respect of the facts as they are appearing on face of it, suffice it to say that the order in question is obtained by Petitioner/Accused by suppression of material facts which amounts to fraud upon Court. The prosecutor also does not seem to have discharged his duties towards the Court. The order has been passed in utter disregard to the order passed by High Court. It is settled law that an order obtained by fraud is *non est* in eyes of law. Hence, this is a fit case to exercise *suo moto* inherent powers under Section 482 Cr.P.C to prevent abuse of the process of Court to set aside order dated 29.05.2023 passed by incharge Additional Sessions Judge, Osmanabad in Sessions Case No. 9/2021.

12. Before parting it needs to be noted that learned District and Sessions Judge, Osmanabad was alert and vigilant to the occurrences around and most importantly did not turn blind eye towards them. She instead of giving undue importance to procedure rightly prioritized prevention of abuse of process of law over technicalities. This act deserves appreciation, as without such positive step, the order in question would certainly have gone unnoticed. As far as legality of the order impugned in this Petition is concerned, with setting aside of the order dated 29.05.2023 in Sessions Case No. 09/2021, that question no more survives for determination. Even otherwise any order obtained by fraud is nullity and hence, learned Sessions Judge was not under legal obligation to accept the surety in pursuant to the order passed, which is apparently demonstrated judicial indiscipline and fraud played by party upon Court. Resultantly, Petition deserves to be dismissed.

13. In view of above discussion, order dated 29.05.2023 passed below Exh. 50 in Sessions Case No. 9/2021 is hereby set aside. The Petition also stands

dismissed.

14. Copy of this order be placed before Hon'ble the Chief Justice on administrative side. A copy be also forwarded to the Principal Secretary, Law and Judiciary for appropriate action within his jurisdiction.

15. Record and proceedings in Sessions Case No. 09/2021 be sent back forthwith.

(R.M. JOSHI, J.)

Malani