

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 977 OF 2022****IN****CRIMINAL BAIL APPLICATION NO. 683 OF 2019**

Jagdish Sonaji Palodkar

... Applicant

V/s.

State of Maharashtra

... Respondent

WITH**INTERIM APPLICATION NO. 225 OF 2022****IN****CRIMINAL BAIL APPLICATION NO. 683 OF 2019**

Vitthalrao Baburao Jagdale

... Applicant

V/s.

Jagdish Sonaji Palodkar and Anr.

... Respondents

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Mr. Nitin Gaware Patil a/w. Mr. Anandmaya Dhorde for Applicant in
IA/977/2022 and for Respondent No.1 in IA/225/2022.

Mr. Prajakt M. Arjunwadkar a/w. Mr. Raj S. M. Satam for Applicant
in IA/225/2022

Ms. Anamika Malhotra, APP for State

Head Constable – V. V. Rahatekar, Khed Police Station present.

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CORAM : SHIVKUMAR DIGE, J.**DATE : 3 OCTOBER, 2023****P C:-**

1. By this Application, Applicant / (original complainant) seeks
cancellation of bail of Respondent No.1 / (original accused).

Respondent No.1 has also filed Application for modification / relaxation of the condition imposed by this Court while passing bail order dated 06.01.2020 (Coram: PD.Naik, J.), as both these applications are in respect of same bail order, hence I am deciding these two Applications together.

2. Learned Counsel for the complainant submits that, while passing bail order this Court had directed the Applicant / original accused to abide by the Affidavit/ undertaking tendered before this Court. In the said order this Court has observed that in the event of breach of undertaking the prosecution and complainant will be at liberty to prefer an application for cancellation of bail. Learned Counsel further submitted that as per the undertaking given to this Court, Applicant has not paid the amount mentioned in the undertaking, hence requested to cancel the bail of Applicant.

3. Learned Counsel for Applicant / Respondent No.1 submits that Applicant had challenged the order passed by this Court before the Hon'ble Apex Court in respect of the Condition No.(iii) imposed in the impugned order. The Hon'ble Apex Court has directed Applicant to file an Application before this Court for modification /relaxation of the condition and as per the order of Hon'ble Apex Court, the present Application is filed.

4. Learned Counsel further submitted that the Applicant could not have been directed to give the amount to the complainant. The Hon'ble Apex Court in the case of ***Ramesh Kumar Vs. State of NCT of Delhi*** reported in 2023 SCC OnLine SC 766 has observed that if the Appellant had undertaken to make the payment, such undertaking could not have weighed in the mind of High Court to decide the question of grant of Anticipatory bail. Learned Counsel further submitted that Applicant was in custody for almost period of 20 months and has suffered serious setback. Applicant hardly could arrange the amount and his business activities had also come to stand still. He is facing serious financial crunch, thus he is not in a position to honor the solemn undertaking given before this Court. Applicant has already paid amount of Rs.15,00,000/- to the complainant. The dispute between the Applicant and complainant is of civil nature hence, requested to modify / relax condition of bail order.

5. I have heard both the learned Counsel.

6. The offence under Sections 420, 468 read with 34 of Indian Penal Code is registered against Applicant / accused. This Court (Coram: P.D.Naik,J.) while granting bail to the Applicant/accused in paragraph No.3 of order has observed that "learned Counsel for the Applicant has tendered affidavit/ undertaking dated 03.01.2020.

The said undertaking sworn by the Applicant in jail where he has been detained. The Affidavit is affirmed before the Jailor, Yerwada prison on 03.01.2020. It is stated that the Applicant would pay an amount of Rs.15,00,000/- and the balance amount of Rs.76,00,000/- will be paid in the installments of Rs. 6,00,000/- on every first day of every month from May-2020 till realisation of the entire amount. The affidavit / undertaking is taken on record and marked "X-1" for identification."

7. It is further observed in paragraph No.5 of the order that "learned Counsel for the Applicant on instructions from the wife of the Applicant who is present in Court submits that post dated cheques of the amount towards balance amount enumerated in the affidavit / undertaking would be handed over to the complainant within one week from the date of his release. It is submitted that Applicant would abide by the contention of Affidavit / undertaking and the cheques would be honoured on due date." Thereafter, this Court on the basis of Affidavit / undertaking and also considering the fact that Applicant was in custody for more than a year, granted bail. While passing order this Court has imposed condition (iii) on the Applicant i.e. Applicant shall abide by the Affidavit / undertaking tendered before this Court. In the event of breach of undertaking the prosecution and complainant will be at liberty to prefer an

application for cancellation of bail. Admittedly, Applicant failed to abide the said condition.

8. It is the contention of learned Counsel for the Applicant that, the said condition be modified or relaxed. It appears from the bail order that the said Affidavit / undertaking was given by the Applicant on his own wish. The Applicant was aware about contents of it. On that basis of undertaking this Court has passed the order, facing financial difficulties cannot be ground to modify / relaxation of bail condition.

9. I have gone through case law cited by learned Counsel for Applicant/accused. The facts of cited case are in respect of Anticipatory Bail whereas in the present case on the basis of undertaking given by the Applicant order is passed by this Court. Moreover, this Court has passed order on 06.01.2020 whereas order passed by Hon'ble Apex Court is of year 2023.

10. In view of the above, I pass the following Order:

- (i) Interim Application No. 225 of 2022 is allowed. The bail granted to the Applicant/ accused in C.R.No. 342 of 2018 registered with Khed Police Station, District Pune is cancelled.
- (ii) Applicant/accused shall surrender before the concerned Police Station tomorrow by 11.00 a.m.

(iii) In view of above order, Interim Application No. 977 of 2022 for modification/relaxation of bail condition is rejected. It is the contention of learned Counsel for the Applicant that the order be stayed for two weeks considering the facts of case, request is rejected.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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