

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.237 OF 2023**

Rahul Ishwar Kapoor

..Applicant

VS.

The State of Maharashtra

..Respondent

Adv. Manish Bohra a/w Adv. Rashid Khan i/b. A. S. Khan  
and Associates for the Applicant.

Ms. P. N. Dabholkar, APP for the State.

Adv. Karan Jain for complainant/intervenor.

PSI-Jagtap, MIDC Police Station is present.

**CORAM : M. S. KARNIK, J.**

**DATE : JANUARY 31, 2023**

**P.C. :**

**1.** Heard learned counsel for the applicant and learned  
APP for the State.

**2.** This is an application for bail by the applicant-Rahul  
Ishwar Kapoor in connection with C.R. No.395 of 2017  
registered with MIDC Police Station, Andheri for the offence  
punishable under Sections 406, 420, 465, 467, 468, 471  
read with Section 34 of the Indian Penal Code, 1860  
(hereafter "the IPC", for short).

**3.** By an order dated 03/06/2019 passed in Criminal Bail  
Application No.291 of 2019 this Court enlarged the

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applicant on bail. The order dated 03/06/2019 reads thus :-

"1. Heard learned counsel for the parties.

2. By these applications, the Applicants seek their enlargement on bail in connection with C.R. No.395 of 2017 registered with the MIDC Police Station, Mumbai, for the alleged offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the Applicants and the learned counsel for the added Respondent no.2 (original complainant) have tendered the Consent Terms dated 2<sup>nd</sup> May, 2019, duly signed by the parties. The same are taken on record and marked 'X' for identification. It appears from the Consent Terms that the parties have amicably settled their dispute and that the Applicants have handed over a flat ad-measuring 629 sq.ft on the 15th Floor of 'Meera Empire' Building, situated at Village Pahadi, Off. M.G. Road, Teen Dongri, Goregaon (West), Mumbai-400 104, to the Respondent No.2, as against part claim of a loan of Rs.1 crore taken from the complainant i.e. Respondent No.2. In addition to the said flat, the Applicants have also handed over a Fortuner Car which is presently in the custody of the police. The Applicants have also agreed to get the Fortuner Car released from the Court along with all necessary original documents, within one month of their release from jail. In addition to the aforesaid, to make up the amount of Rs.1 crore, the Applicants have also given two post-dated cheques for an amount of Rs.10 lakhs and Rs.4 lakhs respectively. The Applicants in the said Consent Terms have also agreed to honour the said cheques on or before 15<sup>th</sup> June, 2019. Pursuant to the aforesaid, the added Respondent No.2 i.e. original complainant has given his No Objection for grant of bail to the Applicants. Learned Counsel for the Applicants submits that in the event the Applicants fail to comply with the undertaking, the Applicants bail be cancelled automatically. He also submits that the Applicants themselves will surrender, in the event they fail to comply with the Consent Terms. Learned Counsel for the Respondent No.2 (original complainant) states that in the event the Consent Terms are complied with, the Respondent No.2 i.e. the original complainant will co-

operate with the Applicants in filing of an appropriate Petition for quashing of the said case before the Division Bench.

4. It is not in dispute that the aforesaid Flat has been given by the Applicants to the original complainant and that there is a registered Agreement which has been entered into with respect to the said Flat. As far as the Fortuner Car and two postdated cheques are concerned, the Applicants have undertaken to hand over the Fortuner Car along with all necessary original documents, within one month of their release from jail to the Respondent No.2, as well as, have undertaken to honour the cheques on or before 15<sup>th</sup> June, 2019.

5. Considering the Consent Terms entered into between the parties, without going into the merits, the applications are allowed and the applicants are enlarged on bail on the following terms and conditions:-

**ORDER**

i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each, with one or more sureties in the like amount;

ii) The Applicants shall abide by the Consent Terms entered into between them and the Respondent No.2 (original complainant);

iii) In the event, the Applicants fail to comply with the undertaking tendered today, the Applicants to surrender before the appropriate Court. It is also open for the Respondent No. 2 to file an application seeking cancellation of their bail.

6. The Applications are allowed and disposed of in above terms.

7. All concerned to act on the authenticated copy of this order."

4. Thereafter, the Criminal Application No.1220 of 2019 was filed for cancellation of bail as the applicant failed to comply with the conditions. By an order dated 13/12/2019

passed by this Court, the bail granted vide order dated 03/06/2019 came to be cancelled. The order dated 13/12/2019 reads thus :-

"It is an application for cancellation of bail. This Court in Criminal Bail Application No.291 of 2019 directed to enlarge respondent no.1 on bail on certain terms and conditions. Condition No.2 of the order reads as under:

"ii) The applicants shall abide by the Consent Terms entered into between them and the Respondent No.2 (Original Complainant)."

2. Respondent No.1 had given Undertaking in writing to this Court on 28<sup>th</sup> November, 2019 that he will pay Rs.10 Lakhs to the Applicant on 4<sup>th</sup> December, 2019 by the Demand Draft. Respondent No.1 has not paid amount as he undertook. Therefore, he breached the Undertaking and the condition imposed while releasing him on bail.

3. Mr. Mithare, the learned counsel for the respondent no.1, submits to the jurisdiction of this Court.

4. In view of the facts of the case, the order dated 3<sup>rd</sup> June, 2019 passed in Bail Application No.291 of 2019 enlarging respondent no.1-Rahul Ishwar Kapoor on bail, is hereby cancelled.

5. Application is disposed of."

**5.** Learned APP and learned counsel for the complainant vehemently opposed the present application. Learned APP submitted that the applicant was not traceable since the cancellation of bail order dated 13/12/2019 and was absconding. The applicant was ultimately arrested on 23/01/2023. It is further submitted that the applicant does not reside at the address which has been furnished by him.

Learned APP further submitted that the applicant has even changed his name. Learned APP submitted that there are antecedents recorded against the applicant. He has been convicted by the Special Court of C.B.I. for the offence punishable under Sections 467, 468, 471, 420, 120-B of the IPC and with rigorous imprisonment of two years and fine. Learned APP vehemently submitted that considering the conduct of the applicant, this is a fit case where the application should be rejected.

**6.** It is pertinent to note that the applicant has filed an affidavit-cum-undertaking dated 30/01/2023 duly affirmed by the applicant's brother – Kunal Ishwar Kapoor who is present before this Court. Learned counsel for the applicant identifies him. Apart from the statements made in the affidavit, learned counsel for the applicant, submitted on instructions, that a sum of Rs.2 lakhs will be paid to the complainant's son-Indrajeetsingh Ramsingh Nagpal during the course of the day. Statement is accepted. The complainant's son has received an amount of Rs.10 lakhs on 13/01/2023 as stated in the affidavit. Furthermore, the

possession of the four wheeler Toyota Fortuner Vehicle is already with the complainant's son. The statement is made that the lien of the bank is fully discharged and that after release on bail, the Fortuner vehicle shall be transferred in the name of the complainant's son. The statements made in the said affidavit are accepted as an undertaking to this Court.

**7.** In this view of the matter, since bail was earlier granted and as now the applicant has substantially complied with the conditions on which he was previously released on bail, also in view of the affidavit-cum-undertaking, the applicant can be released on bail.

**8.** Hence, the following order :-

**ORDER**

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- ii) The applicant is permitted to furnish cash bail surety in the sum of Rs.50,000/- for a period of 6 weeks in lieu of surety.

- iii) The applicant shall attend the concerned Police Station once in a month on every Monday of the first week between 11.00 a.m. and 1.00 p.m.
- iv) The applicant to abide by the affidavit-cum-undertaking dated 30/01/2023.
- v) It is made clear that any breach of the affidavit-cum-undertaking shall be viewed very seriously by this Court.

**9.** The Bail Application is disposed of.

**10.** A request is made by learned APP for stay of this order. The request is rejected.

**(M. S. KARNIK, J.)**