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

CRIMINAL APPLICATION NO.396 OF 2022

Ashish Bhupal Pandav .. Applicant
v/s.
The State of Maharashtra And Ors. .. Respondents

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Mr. Niranjan Mundargi, i/b. Mr. Vikrant Shinde, for the Applicant.
Mr. Arfan Sait, APP, for State.
Ms. Ruju R. Thakkar, for Respondent Nos. 2 and 3.

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CORAM: R.G. AVACHAT, J.

DATE : 9 JANUARY 2023.

P.C:-

Heard.

2. The challenge in this petition is to the order dated 31 March 2022 whereby the bail granted to the Applicant herein came to be cancelled on two grounds. Before Applicant/Accused moved application for default bail, offence under Section 409 of I.P.C. was already invoked. The Investigating Officer had given a written intimation in that regard to the Court concerned. As such, the period for filing of the charge-sheet so as to avoid grant of default bail, was 90 days from the date of arrest of the Applicant. The second ground, on which the bail was cancelled, is that the Applicant misused liberty, since he tried to induce the witness in the case.

3. Learned Advocate for the Applicant submits that the crime, C.R. No.15 of 2021 dated 15 January 2021 was registered for offences punishable under Sections 420, 406 read with 34 of the Indian Penal Code and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors Act (MPID Act) and under Sections 3, 4 and 8 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management & Transfer) Act, 1963. He would further submit that mere invoking of Section 409 IPC was not sufficient. The court seized of the matter can look into the contents of the FIR and other related police papers to find whether really Section 409 IPC could be invoked. He would further submit that neither the State nor the Informant, at whose instance the crime was registered, had moved the application for cancellation of bail. As regards the second ground is concerned, learned Advocate would submit that it was an effort made by the Applicant to see that the matter was settled. By no stretch of imagination, it could be said that the Applicant, by doing so, misused his liberty or tried to influence the witness. He would further submit that the charge-sheet has later on been filed. The Applicant has not misused liberty or breached conditions of bail.

4. Learned Advocate for Respondent No.2/victim would submit that it was an economic offence. Learned Additional Sessions Judge has rightly cancelled the bail. Respondent No.2 is one of the flat purchasers. The flat purchased by him from the Applicant and co-

accused had already been sold to someone else before the transaction with Respondent No.2 was entered into. Each flat of building of 27 flats has been sold to more than one person. This was nothing but a cheating. The amount involved in the crime is over Rs. three and half crores. Co-accused has not yet been arrested. Respondent No.2 had to run pillar to post. Learned Advocate for Respondent No.2 relied on the judgment of Delhi High Court in case of *Lalita Saini vs. State & Anr.*¹.

5. Learned APP supported the impugned order.

6. Considered the submission advanced. Perused the order impugned herein. Gone through the relevant papers relied on.

7. The facts of *Lalita Saini's* case suggest that in spite of Section 409 IPC to have already been invoked, the court concerned granted default bail with observations that the charge-sheet was not filed within 60 days from the date of first remand of the accused therein.

8. The facts of the case at hand are quite different. It is true that the Applicant and co-accused appeared to have indulged in the crimes punishable under Section 420, 406 of IPC and other sections of MPID Act. The Applicant was arrested on 31 March 2021. He was

1 Delhi High Court Crl.M.C.3903/2019 and Crl. M.A.33058/2019 dated 14 August 2019.

granted bail on 1 June 2021, i.e. no sooner 60 days of his arrest were over. Bail was granted on an application moved by the Applicant for default bail. On the given date, regular court was on leave. The matter was, therefore, taken up before the In-charge Court, Additional Sessions Judge. The In-charge Court had called upon the Court Superintendent to report as to whether charge-sheet was filed. The report submitted by the Superintendent of Sessions Court Vasai indicate that no charge-sheet was filed by then. Learned APP was also called upon to give his response to the application for default bail. After raising objection to the application, learned APP ultimately submitted that necessary orders may be passed.

9. The Investigating Officer, on 20 May 2013, by written intimation informed the Court of Additional Sessions Judge, Vasai, that Section 409 IPC has been invoked. A copy of the said communication is on record. Admittedly, neither the APP, nor the Court Superintendent, brought this fact to the notice of the In-charge Court. Thus, the fact remains that when application for bail was being entertained, the Court concerned was of the view, rightly so since the charge-sheet was not filed within 60 days from the date of first remand, the Applicant deserved grant of bail.

10. It is reiterated that neither the State, nor the Informant, did move for cancellation of bail granted to the Applicant herein.

Respondent No.2, one of the victims of the crime, moved the application. It is also true that had the fact of invocation of Section 409 of IPC was brought to the notice of the Court concerned, the Applicant could not have been granted default bail. The Court do not propose to make any observations as to whose fault or negligence it was in not informing the court concerned.

11. The impugned order cancelling the default bail came to be passed in March 2022. About 10 months have passed thereafter. Interim stay is operating against the order. The charge-sheet has already been filed. There is prima facie nothing to suggest the Applicant to have breached conditions of bail or influenced any of the witnesses. True, the Applicant appears to have had approached Respondent No.2. It was, however, in connection with settlement of the matter. The details of such communication are not before this Court. In the peculiar facts and circumstances of the case, it will not be desirable to send the Applicant back to jail and ask him to move a fresh application for bail. In view of the same, interference with the order impugned herein is called for.

12. In the result, the application succeeds in terms of prayer clause (a).

(R.G. AVACHAT, J.)