

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

CRIMINAL APPLICATION NO.301 OF 2019

Jugalkishor S/o. Bhajanlal Didwania ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Anand Mishra i/b. Mr. Ashok M. Saraogi for the Applicant.

Mr. S.H. Yadav, APP for Respondent-State.

Mr. Yogesh Ramchandra Pawar, PI, EOW, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 7th JUNE, 2023.

P. C. :-

1. This is an application for cancellation of bail granted to Respondent No.2 vide order dated 13/04/2017 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in C.R. No.127 of 2016 registered with Paidhuni Police Station for the offences punishable under Sections 406, 417, 418, 420, 465, 467, 468, 471, 474 and 120B of the IPC.

2. The allegations against Respondent No.2 are that she along with others had siphoned off an amount of Rs.6.6 crores. Crime against Respondent No.2 and others was registered pursuant to the FIR lodged

by the Applicant. The FIR reveals that Respondent No.2 was known to the Applicant since the year 2013. It was alleged that Respondent No.2 had represented to the Applicant that some iron plates /scrap material was for sale. The Applicant had agreed to purchase the said scrap material. The Applicant had paid certain amount to Respondent No.2, pursuant to which she had given him some scrap material. The Applicant has alleged that Respondent No.2 and others failed to supply the scrap material and cheated him to the tune of Rs.6.6 crores.

3. The Respondent No.2 was arrested in the said crime and upon completion of the investigation charge-sheet was filed. By order dated 13/04/2017 learned Additional Chief Metropolitan Magistrate granted bail to Respondent No.2 mainly on the ground that only an amount of Rs.8,86,194/- was transferred to the account of Respondent No.2 and that she had expressed her willingness to deposit the same without prejudice to her rights. It was observed that the charge-sheet has been filed and that there is no probability that the Applicant tampering with the documentary evidence. Learned Judge also observed that Respondent No.2 is a permanent resident of Mumbai and that there are no chances of her absconding.

4. The bail is sought to be cancelled mainly on the ground that Respondent No.2 and others misappropriated an amount over Rs.6 crores and there was no justifiable reasons to grant bail.

5. It is well settled that parameters for grant of bail are entirely different from cancellation of bail. In ***Myakala Dharmarajam and Ors. v/s. The State of Telangana and Anr. (2020) 2 SCC 743***, the Apex Court has observed thus :-

“6. The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7. *In Raghbir Singh v. State of Bihar* this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.
8. *It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.”*

6. The impugned order is neither perverse nor suffers from infirmity. Respondent No.2 is on bail since the year 2017. She has not misused the liberty. Hence, no case is made out for cancellation of bail. Under the circumstances, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)