

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

Criminal Writ Petition No.3894 of 2018

Chothmal M. Gehlot

Aged : 48 years, Residing at
C-504, Veneu Madhav Building,
Yadhushri Complex, Tirupati Nagar,
Virar (West), Dist :Thane.

...Petitioner.

Versus

1. The State of Maharashtra

2. Mr Mohanlal Khimji Borana

Residing at Flat No.503, 5th Floor,
Ankur Residency, Vaibhav Nagar,
Chembur, Mumbai -400 071.

...Respondents

Mr Yashpal Maheshchandra Thakur, Advocate for the
Petitioner.

Mr Prakash Jain a/w Advocate Darshan Bafna for respondent
No.2.

Smt MH Mhatre, APP for respondent/State.

Coram : R. N. Laddha, J.

Date : 8 November 2023.

P.C. :

Heard Mr Yashpal Maheshchandra Thakur, the learned
Counsel for the petitioner; Mr Prakash Jain, the learned
Counsel for respondent No.2; and Smt MH Mhatre, the

learned Additional Public Prosecutor for the State.

2. The petitioner has approached this Court for quashing and setting aside the order dated 26 July 2018 passed by the Sessions Court in Miscellaneous Application No.985 of 2018 which cancelled the bail granted to the petitioner/accused on 13 April 2018, in B.A.No.42 of 2018, by the learned Magistrate.

3. The record shows that respondent No.2 filed an FIR vide CR No.54 of 2018 at LT Marg Police Station, Mumbai, against the petitioner and one Dineshkumar Parihar for the offence punishable under Sections 409, 420 r/w 34 of the Indian Penal Code (IPC). The petitioner was arrested on 6 April 2018 and remanded to judicial custody till 26 April 2018. On 12 April 2018, the petitioner applied for bail vide Bail Application No.42 of 2018 before the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. After hearing the parties, the learned Magistrate granted bail to the petitioner vide order dated 13 April 2018 on certain terms and conditions mentioned in the order. As per the directions of the learned Magistrate, the petitioner deposited cash bail of Rs.30,000/-, executed Personal Bond, furnished sureties, and was released on bail by complying with the directions of the

learned Magistrate.

4. In April 2018, respondent No.2 filed a Miscellaneous Application No.985 of 2018 before the Sessions Court to cancel the bail granted by the learned Magistrate. The application was preferred mainly on the ground that, while obtaining bail, the petitioner made a false declaration before the learned Magistrate, and based on such declaration bail was granted. After hearing, the learned Additional Sessions Judge allowed the said Miscellaneous Application vide its order dated 26 July 2018, and accordingly, the bail granted by the learned Magistrate was cancelled. The learned Additional Sessions Judge further directed the learned Magistrate to take the petitioner into judicial custody. Aggrieved thereby, the petitioner filed the present petition.

5. Mr Yashpal Thakur, the learned Counsel appearing on behalf of the petitioner, submitted that the charge sheet was filed before the learned trial Court in 2018, bearing CC No.396/PW/2018, after the completion of the investigation. Therefore, the petitioner's custody is not warranted as it would serve no purpose to keep the petitioner behind bars. The learned Counsel further submitted that the reply filed by the petitioner explicitly states that he never filed any consent

terms on record nor has argued the said fact before the learned Magistrate during the course of oral submissions. Although such pleadings were made in the reply filed by the petitioner, the learned Additional Sessions Judge committed an error in observing that the petitioner failed to file an affidavit on record with regard to the non-filing of consent terms on record of the Court.

6. On the other hand, Mr Prakash Jain, the learned Counsel for respondent No.2, submitted that the petitioner obtained bail by misrepresenting facts and committing fraud upon the Court. He submitted that the petitioner falsely stated before the learned Magistrate that the matter had been settled between the informant and the accused, which led to the grant of bail.

7. I have carefully considered the arguments advanced by both parties. With the able assistance of the learned Counsel for the parties and learned APP, I have examined the entire material available on record.

8. Upon examining the order dated 13.4.2018 passed by the learned Magistrate, it is evident that the alleged settlement between the parties was not the sole reason for the Magistrate

to pass the bail order. Further, the bail order does not suggest that the alleged settlement was claimed and argued by the accused/petitioner. Additionally, the accused/petitioner has not been accused of abusing the privilege of bail or misusing the liberty granted to him. Nothing is on record, even *prima facie*, to indicate that the accused/petitioner obtained the bail order by practising fraud upon the Court.

9. In view of this, the impugned order dated 26 July 2018, passed by the learned Additional Sessions Judge, Mumbai, in Miscellaneous Application No.985 of 2018, is quashed and set aside.

10. The present writ petition stands disposed of accordingly.

[R. N. Laddha, J.]