

Ghuge

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

WRIT PETITION NO.4583 OF 2022

Vishal Gangaram Salvi ... Petitioner
V/s.
State of Maharashtra and Anr ... Respondents

**WITH
WRIT PETITION NO.4584 OF 2022**

Maya Gangaram Salvi and Ors ... Petitioners
V/s.
State of Maharashtra and Anr ... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO.459 OF 2022**

Vishal Gangaram Salvi ... Applicant
V/s.
State of Maharashtra and Anr ... Respondents

Mr. Pratap Patil i/b Mudita Kadam for the petitioner in
W.P. No.4583/2022, 4584/2022 and Applicant Cri.
Revision Appln No.459/2022.

Mr. A.R. Patil, APP for the State.

Mr. T.D. Sakunde, API, Navghar Police Station.

Mr. Rajes A. Naik for respondent No.2 in Cri. Revision
Application No.459/2022.

CORAM : AMIT BORKAR, J.

DATED : MARCH 21, 2023

P.C.:

1. The writ petitions are directed against the order dated 8th December, 2022 passed by learned Additional Sessions Judge, Thane in Criminal Miscellaneous Application No.737 of 2022, cancelling pre-arrest bail granted to the petitioners in relation to offences punishable under Sections 498-A, 406, 427, 323, 504, 506, 507, 509 read with 34 of the Indian Penal Code, 1860. Respondent No.2 filed First Information Report No.636 of 2022 on 16th August 2022 against the petitioner for offences punishable under Sections 498-A, 406, 427, 323, 504, 506, 507, 509 read with 34 of the Indian Penal Code, 1860. The petitioners, therefore, applied Section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge, by order dated 29th September 2022, granted interim protection and thereafter, by an order 15th October 2022, allowed the application on the same condition.

2. The condition relevant for adjudication of the present petition, which is a condition (iv), reads as under:-

(iv) The accused are hereby directed to hand over the cash amount to the informant within a period of four weeks from today.

3. The accused are hereby directed to hand over cash to the informant within a period of four weeks from today.

4. The petitioner applied for modification of condition No. (iv) imposed in the order granting the pre-arrest bail. The said application came to be rejected, which is the subject matter of the Criminal Revision Application No.459 of 2022.

5. The law laid down on the point of cancellation of bail is well settled in view of the judgment of the Apex Court in the case of **X v. State of Telangana (2018) 16 SCC 511**, wherein the apex court laid down the parameters for consideration of bail which are as under :

“15. These principles have been reiterated by another two-Judge Bench decision in *CBI v. Subramani Gopalakrishnan* [*CBI v. Subramani Gopalakrishnan*, (2011) 5 SCC 296] and more recently in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22] : (*Subramani case* [*CBI v. Subramani Gopalakrishnan*, (2011) 5 SCC 296]

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

6. It is also well settled that direction to pay the amount by the accused while releasing him on bail is only permissible if the accused volunteers to comply with such condition.

7. The learned Sessions Judge in the impugned order had

observed that the petitioner before the Mediator agreed to pay the amount they have paid to obey before the Court, and therefore the order is invited by them.

8. On scrutiny of the provisions of sub-section (2) of section 438 and sub-section (3) of Section 437 of the Code, it is clear that the court having regard to the facts and circumstances of the case, can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. Any other condition not specified in the provisions of Section 438 of the Code can also be imposed since the conditions specified are inclusive, but the other conditions which could be imposed must be *ejusdem generis* as the condition specified in Section 438. The discretion of the court while imposing conditions should be judicial discretion.

9. A similar question came up for consideration before the Apex Court in **Munish Bhasin v. State (Government of NCT of Delhi)** reported in (2009) 4 SCC 45. In the said case, the Apex Court has observed as under :-

“10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code, neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

11. The conditions which can be imposed by the court while granting anticipatory bail are enumerated in sub-section (2) of the Section 438 and sub-section (3) of Section

438 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or court, or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order, etc. To subject an accused to any other condition would be beyond the jurisdiction of the power conferred on the court under Section 438 of the Code.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.

13. In the instant case, the question before the Court was whether having regard to the averments made by Ms. Renuka in her complaint, the appellant and his parents were entitled to bail under Section 438 of the Code. When the High Court had found that a case for grant of bail under Section 438 was made out, it was not open to the Court to direct the appellant to pay Rs. 3,00,000/- for past maintenance and a sum of Rs. 12,500/- per month as future maintenance to his wife and child. In a proceeding under Section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child.

14. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of husband to pay maintenance could be determined and appropriate order would be passed

directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has already approached the appropriate court for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under Section 438 of the Code. The condition imposed by the High Court directing the appellant to pay a sum of Rs. 12,500/- per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside.”

10. Therefore, the learned Sessions Judge could not have imposed such a condition of payment of an amount contrary to the law laid down by the Apex Court in the case of **Munish Bhasin (Supra)**.

11. Therefore, considering the nature of the offence alleged against the petitioner and the allegations against the parties, the petitioner has made out a case for setting aside the impugned order.

12. For the reasons stated above, both the writ petitions are allowed in terms of prayer clause (a) and Criminal Revision Application is allowed in terms of prayer clause (a) and (c). No costs.

(AMIT BORKAR, J.)