

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

**INTERIM APPLICATION NO.4677 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.2329 OF 2022**

Harneet Kaur Matharoo wd/o
Bhupinder Singh Matharoo ...Applicant
Versus

The State of Maharashtra and Anr. ...Respondents

**INTERIM APPLICATION NO.329 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2331 OF 2022**

Harneet Kaur Matharoo wd/o
Bhupinder Singh Matharoo ...Applicant
Versus

The State of Maharashtra and Anr. ...Respondents

...

Mr. G.L. Bajaj, Mr. Raunak Bajaj and Ali Aqdas Khan for the Applicant.
Mr. S.V. Gavand, APP for Respondent No.1-State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th APRIL, 2023.

P. C. :-

1. This is an application under Section 439 (2) of the Cr.P.C. for cancellation of bail, granted by this Court (Coram: Bharati Dangre, J.) vide order dated 04/10/2022 in Anticipatory Bail Application Nos.2329 of 2022 and 2331 of 2022.

2. The aforesaid applications for pre-arrest bail were filed by the Respondent No.2 apprehending his arrest in C.R. No.370 of 2022 registered with Vakola Police Station, for the offences punishable under Sections 420, 464, 465, 467, 468 and 471 of the IPC, which was registered pursuant to the FIR lodged by the Applicant herein. It is stated that father-in-law of the First Informant, her husband and brothers-in-law are the partners of M/s. Bharati Workshop. The husband of the Applicant herein had 8% share in the said Partnership Firm. Her husband died on 21/05/2015 due to cancer and her father-in-law died on 03/01/2021. The First Informant alleged that after the death of her husband surviving partners did not give any financial help to the Applicant/First Informant. It is stated that the surviving partners had forged the documents to indicate that her husband had retired from the Partnership Firm. The First Informant claimed that the surviving partners had refused to give share in the said Partnership Firm on the basis of the forged documents and thereby cheated her.

3. The records reveal that both the parties had entered into amicable settlement. Without prejudice to the rights and contentions, the Respondents had filed an affidavit-cum-undertaking wherein the Respondents /Applicants in Anticipatory Bail Application agreed to give

8% share of the net profit of the Firm. It was further agreed that in the event of disposal of any assets of the Partnership Firm or any part thereof, 8% share of the said amount would be given to the legal representatives of late Bhupinder Singh. Said affidavit-cum-undertaking was accepted by this Court. This Court also recorded a statement that as far as future payment is concerned, after clearing the arrears, the Respondent No.2 /Applicants in Anticipatory Bail Applications shall make payment of other dues on regular basis and on quarterly basis. Liberty was given to the First Informant to move an application for cancellation of bail in the event of failure to comply with the undertaking.

4. Learned counsel for the Applicant states that out of profit of the Partnership Firm of Rs.14,87,64,305/- the Applicant is entitled for 8% share, which works out to Rs.1,19,01,144/-. As against this, Respondents have deposited Rs.29,39,058/-. He submits that this is in breach of undertaking given to the Court and for this reason the bail granted to Respondent No.2 needs to be cancelled.

5. The affidavit-cum-undertaking filed by the Respondent No.2 as well as the order of the Court does not quantify the exact

amount payable to the Applicant/ First Informant. The Respondents agreed to pay 8% of net profit without prejudice to their rights and contentions and subject to accounts and the orders passed in the Partition Suit I.e Suit (L) No.6852 of 2022 pending before this Court.

6. Learned counsel for Respondent No.2 has placed on record copy of the certificate issued by the Chartered Accountant, which indicated that 8% of the amount payable to the First Informant is 44,87,764/-. Learned counsel for Respondent No.2 states that an amount of Rs.29,38,058/- has been paid to the Applicant/First Informant after deducting the amount, which was already paid to her.

7. The undertaking does not indicate that the Respondents were entitled to deduct the amount, which was already paid to the First Informant. On the contrary, as stated earlier, as per the undertaking given before the Court, the Respondents were required to pay to the Applicant /First Informant as 8% of the net profit, which as per the certificate issued by the Chartered Accounts is Rs.44,87,764/-. Learned counsel for the Respondents states that the Respondents shall pay the balance amount within two weeks. Learned counsel for the Applicant also states that the Respondents have not given any accounts for the

year ending 31/12/2020. Learned counsel for the Respondents states that yearly account will be submitted. The statement is accepted.

8. The contention of the learned counsel for the Applicant is that 8% works out to Rs.1 crores. It is stated that partition suit is pending before this Court and that the payment is without prejudice to the rights and contentions of the parties and subject to outcome of the suit. The exact amount payable to the Applicant/First Informant shall be decided in the said suit. Bail granted to the Applicant cannot be cancelled on the grounds raised by the Applicant. Hence, the applications are dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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