



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO. 1301 OF 2023

Shoyeb Liyakatali Shaikh

VERSUS

The State of Maharashtra and another

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Advocate for the Petitioner : Mr. Shaikh Mazhar A. Jahagirdar

APP for Respondent No.1: Mr. Satish A. Gaikwad

Advocate for Respondent No.2 : Mr. A.G.Ambedkar

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 23rd JANUARY, 2024.

PER COURT :-

1. This writ petition is directed against the order dated 06.07.2023 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal M.A. No. 142 of 2022. By the said order, the bail granted to the petitioner by order dated 2.8.2021 was cancelled, on the following conditions:-

- "1. Cri. M.A. (Bail) No. 1143/2021 is hereby allowed.
2. Applicant/accused Shoeb Liyakat Ali Shaikh, be released on bail in CR No. 31 of 2021 registered with Bhingar camp police station, Ahmednagar for the offence punishable under sections 420, 406, 417, 465, 468, 471 r.w. 34 of Indian Penal Code, on furnishing PR bond of Rs.50,000/- with surety in like amount, on following conditions:-
 - I) He should attend Bhingar camp police station on every Thursday in between 10.00 a.m. to 12.00 noon till filing of charge sheet and co-operate with the investigation.
 - II. He should not come in contest in any way with informant Avej Shaikh and the witnesses nor to tamper them.

3. He should not commit similar offence while on bail.
4. Bail before Ld. JMFC.
5. This bail application stands disposed of, accordingly.”

2. It is alleged that the petitioner did not follow the conditions and particularly that he committed similar kind of crime bearing No. 545 of 2022 under Sections 420, 406 r.w. 34 of I.P.C. The said crime was registered on 01.06.2022. The another ground is that the petitioner did not attend the court regularly.

3. The learned Additional Sessions Judge in para 8 of its order dated 06.07.2023, observed as follows:-

“8. This is an offence of cheating with forgery. After getting released on bail, the opponent No.1 again committed similar offence within the jurisdiction of Kondhawa police station bearing CR No. 545/2022 under Section 420, 406 r.w. 34 of Indian Penal Code on 01.06.2022. Prosecution also in its say duly supported this contention. Thus, he committed breach of important condition of his bail. Secondly, opponent No.1 failed to regularly and punctually attend the police station to give co-operation to police in their investigation. Prosecution also in its say duly supported this contention.”

4. Learned advocate for the petitioner submitted that the alleged crime is occurred in the year 2020, however, the report was lodged in the year 2022. Therefore, the said ground is not legal and justifiable for

cancellation of his bail. Learned advocate for the petitioner further submitted that the advocate for the petitioner Mr. Dhapse died and therefore, the petitioner could not attend the scheduled dates. He lastly prayed to allow the writ petition.

5. Learned A.P.P. for the State strongly opposed the petition. Learned advocate for respondent No.2 informant has also strongly opposed the petition and pointed out para Nos.8 and 9 of the impugned order. He submitted that the petitioner committed breach of the important conditions of bail, as he did not attend the police station and committed similar crimes. Learned advocate for respondent No.2 pointed out Roznama/daily sheet of R.C.C. No.1324 of 2021 in which it is shown that, frequently the petitioner remained absent. Once he had prayed for cancellation of non bailable warrant and it was allowed. Even, thereafter also the petitioner remained absent on many dates. He lastly prayed to dismiss the petition.

6. Learned advocate for the petitioner has placed reliance on the judgment of Hon'ble Supreme court in the case of ***Dolat Ram and Ors. vs. State of Haryana***, decided on 24.11.1994, in which the Hon'ble Supreme Court has laid down as follows:-

“ Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking,

the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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 concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted."

7. As far as not attending the police station by the petitioner is concerned, the daily attendance diary shows that the petitioner attended the police station. The statement of learned advocate for the petitioner that the advocate for the petitioner died and therefore, he could not attend the dates fixed before the trial court, is partly acceptable. It is because the petitioner has to remain cautions when he is released on bail in the serious case.

8. As far as commission of second crime is concerned, it occurred in the year 2020, and the report of which was lodged in the year 2022. This aspect was not properly considered by the trial court. Considering all these factual aspects, the reasons given by the learned

Additional Sessions Judge, Ahmednagar are not found legal, correct and justifiable. However, considering the fact the petitioner remained absent for so many dates and the trial has been prolonged, it would be appropriate to allow the writ petition by imposing some costs on him.

9. In view of above, writ petition is allowed. The order dated 06.07.2023 cancelling the bail in criminal M.A. No.142 of 2022 is quashed and set aside, on the condition that the petitioner shall deposit an amount of Rs.10,000/- towards costs, within two weeks from today, to be paid to Ehsaas Matimand Mulanche Balgruh, Satara, by depositing the same in its account. The account details of the Ehsaas Matimand Mulanche Balgruh, Satara are as under:-

Name of the Bank	:	Bank of Maharashtra
Branch	:	Krishna Nagar Satara
Account No.	:	60028487347
IFSC Code	:	MAHB0000619
Account type	:	Saving account

10. The petitioner shall remain present before the trial court on 02.02.2024 and shall continue to remain present before the trial court on the next dates also.

11. It is clarified that if the petitioner continuously remain present for three consecutive dates, the trial court is at liberty to cancel the bail of the petitioner without reference to this court.

(SANJAY A. DESHMUKH, J.)

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