



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR CANCELLATION OF BAIL NO. 152 OF 2023
IN BA/712/2023
WITH
CRIMINAL APPLICATION NO. 3946 OF 2023
IN ACB/126/2023

YOGESH NANDKISHOR MATULKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. Amol Balasaheb Chalak
APP for Respondent : Mr. A. S. Shinde
Advocate for Respondents No.2 and 4 : Mr. Vikram V. Tare Patil
(through Video Conference)
Advocate for Respondent No.3 : Mr. Suraj Bagal holding for
Mr. M. R. Sonawane

...
WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 126 OF 2023
IN BA/712/2023

WAMAN SHRIPATRAO KHEDEKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Amol Balasaheb Chalak
APP for Respondent No.1 : Mr. A. S. Shinde
Advocate for Respondent No.2 : Mr. Deepak K. Rajput
...

CORAM : S. G. MEHARE, J.

DATE : 02-04-2024

PER COURT :-

1. Heard the learned counsel for one of the applicants/
complainants (depositors). He applied for cancellation of default
bail of the respondents/accused.

2. It is a case of applicant Waman Khedekar that the respondent/accused Irfan was not attending the trial regularly. One of the contentions of the applicants is that after granting bail, the chargesheet was filed and after curing the defect a strong case is made out that the accused have committed very serious non-bailable offence. If the Court does not cancel bail, that would frustrate the ends of justice.

3. The learned counsel for the applicants submits that the serious crime has been committed. The respondents/accused have hand in gloves with the Investigating Officer. The chargesheet was not deliberately filed within prescribed time as provided under Section 167 of the Code of Criminal Procedure. Respondent No.2/accused Irfan is deliberately not attending the trial. Rest of the accused have been arrested in another crime.

4. To bolster his argument, he relied on the case of the ***State Through Central Bureau Investigation vs. T. Gangi Reddy Alias Yerra Gangi Reddy, AIR 2023 SC 547.***

5. Learned counsel for the respondent/accused Irfan submits that since the complainant at Jalna are politically influential, he has danger to his life. Therefore, he applied before the trial Court to grant him permanent exemption from his appearance in the Court. He did not deliberately remain absent from the Court. His lawyer is attending the case. Since crimes are registered against

him at various places, he has applied before the Principal seat at Bombay High Court, for consolidating all these crimes for common trial. That application is pending. He has no intention to protract the trial. The investigation has been completed. However, the chargesheet was not filed and, hence, after considering various case laws and the law, this Court granted them default bail. After filing the chargesheet, there is no new discovery against them. Therefore, the ratio laid down in the case of ***State through C.B.I.*** (supra) does not apply. The common argument of the learned counsels for the accused is that there is no ground to cancel the bail. Therefore, the applications deserve to be dismissed.

6. This Court, by detailed order dated 03.05.2023, had granted default bail to the accused. Thereafter, these applications have been filed. The Hon'ble Supreme Court, in the case of ***State through C.B.I.*** (supra) has held that after granting the default bail, if, on filing the chargesheet, a strong case is made out that the accused has committed serious non-bailable offence, a default bail granted to the accused may be cancelled.

7. The Hon'ble Supreme Court also observed that mere filing of chargesheet would not be a ground for cancellation of default bail. In this case, when the time to file chargesheet was over, the Investigating Officer had merely filed an application for adding section without following due procedure of law. This Court has

recorded findings on such conduct of the Investigation Officer in the order dated 03.05.2023. The condition to cancel default bail, as observed by the Hon'ble Supreme Court in the case **State through C.B.I.** (supra), is that there shall be a strong case made out against the accused and it is a non-bailable offence. The prosecution/complainant has to satisfy the Court that the custody of the accused is essential. The Hon'ble Supreme Court referring to the case of **Abdul Basit Alias Raju and others, (2014) 10 SCC 754**, has reproduced the observations as regards the cancellation of default bail and then laid down the ratio as discussed above.

8. Except absence of accused Irfan from the trial, the record/chargesheet does not reveal that a strong case is made out that the accused have committed a very serious non-bailable offence, if the Court cannot cancel the bail, that would frustrate the ends of justice.

9. For the above reasons, the applications stand dismissed.

(S. G. MEHARE)
JUDGE

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