

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

**INTERIM APPLICATION NO. 4406 OF 2023
IN
BAIL APPLICATION NO. 1429 OF 2022**

Narendra s/o Suresh Bhare ...Applicant
Versus
State of Maharashtra and Anr. ...Respondents

Mr. S. S. Panchpor a/w Mr. A. S. Rabade, Mr. Aditya Raktade,
Mr. Omkar Deshpande and Mr. Anup Kamble for applicant in
IA/4426/2023.

Mrs. Mahalaxmi Ganapathy, APP for the Respondent – State.

Mr. Kedar J. Patil a/w Mr. Pratik Tare and Sakshi Kadam for
Respondent No.2.

PSI N. B. Patil, Shahapur Police Station Dist. Kolhapur.

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CORAM : N. J. JAMADAR, J.
DATE : 25th JULY 2024

PC.:

1. This is an application for cancellation of bail granted under
Section 167 of the Code of Criminal Procedure, 1973 (The
Code), to the Respondent No.2 by an order dated 11th July 2022.

2. The Respondent No.2 has been arraigned in C.R. No.132 of
2019, registered with Shahapur Police Station, District Kolhapur,
for the offences punishable under Sections 120-B, 395, 392, 386,
387, 452, 326, 504, 506 and 427 read with 34 of the Indian

Penal Code, 1860 (“the Penal Code”) and Sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (“The MCOCA, 1999”).

3. By an order dated 11th July 2022, this Court was persuaded to grant bail to the Respondent No.2 observing as under :-

“20. In the case at hand, the extension of period of investigation and consequently detention of the applicant is unsustainable on three counts. One, the Public Prosecutor had not filed the report seeking such extension indicating the progress of the investigation and spelling out the reasons for detention beyond the period of 90 days. Two, no notice of the application for extension of period was given to the applicant. Three, the order of extension passed by the learned Special Judge does not indicate application of mind by the learned Special Judge.

21. Once the order of extension of period of investigation is found to be legally unsustainable, the infeasible right of the accused to be released on the completion of the 90 days period gets crystallized. In the case at hand, the applicant filed an application for default bail on 4th April, 2022. Charge-sheet came to be lodged subsequently on 11th April, 2022. It implies that on the day, the applicant availed the right to be released on bail i.e. 4th April, 2022, the investigation was not complete. Thus, the rejection of the application by the learned Special Judge, by order dated 18th April, 2022 also becomes legally unsustainable.

22. The endeavour of Mrs. Pai, the learned Special Public Prosecutor, to persuade the Court to delve into the nature and gravity of the accusation against the applicant and the antecedents of the applicant does not deserve countenance as those considerations are not at all germane while considering an application for default bail. I am, therefore, persuaded to release the applicant on bail.”

4. The applicant/first informant preferred the Special Leave Petition, being Special Leave Petition (Cri) No.9905 of 2022

assailing the said order. The said petition alongwith SLP (Cri) No. 6847 of 2023 were disposed by the Supreme Court observing that, there was no reason to interfere with the aforesaid order. It was, however, clarified that if the State or petitioner in SLP (Cri.) 9905 of 2022 - the applicant herein, seek to avail any other remedy which is open to them in law, dismissal of those petitions shall not be an impediment.

5. Availing the aforesaid liberty, the applicant/first informant has preferred this application for cancellation of bail. In the application, it is, *inter alia*, averred that the respondent No.2/accused is a habitual offender with multiple antecedents relating to various offences. Reference is made to the FIRs which have been subsequently registered against the Respondent No.2. It is alleged that the Respondent No.2 is the leader of a Organized Crime Syndicate “S.P. Sarkar” and had created a reign of terror. There is an eminent threat to the safety of the first informant, his family members and other witnesses in the said case and the citizens at large, if the respondent No.2 remains on bail. Hence, this application.

6. An affidavit-in-reply has been filed on behalf of the

respondent No.2, questioning the tenability of the application and refuting the grounds on which cancellation of bail is sought.

7. I have heard Mr.Panchpor, the learned Counsel for the applicant, Ms.Ganapathy, the learned APP for the State-Respondent No.1 and Mr.Patil, the learned Counsel for the Respondent No.2/accused.

8. Mr.Panchpor, the learned Counsel for the applicant submitted that even where a person has been released on default bail under Section 167(2) of the Code, the Court is empowered under Section 439(2) of the Code, to cancel the bail, if post filing of the charge-sheet, a strong case is made out on merits. To this end, Mr. Panchpor placed reliance on a judgment of the Supreme Court in the case of *State though Central Bureau of Investigation Vs. T. Gangi @ Reddy @ Yerra Gangi Reddy*¹ wherein the law was enunciated as under:-

“27. From the above, the law, which emerges is that mere filing of the charge-sheet subsequent to a person is released on default bail under Section 167(2) CrPC cannot be a ground to cancel the bail of a person, who is released on default bail. However, on filing of the charge-sheet on conclusion of the investigation, if a strong case is made out and on merits, it is found that he has committed a non-bailable offence/crime on the special reasons/grounds and considering Section 437(5) and Section 439(2) CrPC, over and above other grounds on which the bail to a person, who is released on bail can be cancelled on merits.

1 (2023) 4 SCC 253

28. Therefore, there is no absolute bar as observed and held by the High Court in the impugned judgment and order that once a person is released on default bail under Section 167(2) CrPC, his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the trial court concerned, etc.”

9. Mr. Panchpor further submitted that, in the case at hand, when this Court granted default bail to the applicant, the charge-sheet was already filed. The said fact, especially the gravity of the accusation against the respondent No.2, ought to have been taken into account by this Court while exercising the discretion to release the respondent No.2 on bail.

10. The aforesaid two submissions are not complimentary to each other. Indisputably, if the special circumstances exist and a very strong case is made out, the Court of Sessions and High Court are empowered to cancel the bail by invoking the power under Section 439(2) of the Code, even when an accused is released on default bail under Section 167(2) of the Code. However, the second submission of Mr.Panchpor, learned Counsel for the applicant that the Court should have considered the merits of the accusation against the applicant while considering the prayer for default bail, does not merit countenance. In fact, such endeavour of the learned Special Public Prosecutor was

repealed by this Court, while releasing the Respondent No.2 on bail, as is evident from the observations in paragraph 22 of the order (extracted above).

11. Mr.Panchpor next submitted that the bail granted to Respondent No.2 is required to be cancelled on account of the four subsequent FIRs registered against the Respondent No.2.

12. I have perused the copies of FIRs. C.R.No.15 of 2023 has been registered with Shivajinagar Police Station, Kolhapur, for an offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887. Likewise, C.R. No.381 of 2023 has been registered with Ichalkaranji Police Station, Kolhapur for an offence punishable under Section 12(a) of the Maharashtra Prevention of Gambling Act, 1887. C.R.No.46 of 2023 has been registered for the offences punishable under Sections 141, 143, 145, 149 of the Penal Code. Fourth FIR bearing C.R. No.41 of 2024 seems to have been registered for an offence punishable under Sections 171 read with 34 of the Indian Penal Code, 1860.

13. Suffice to note in C.R.No.15 of 2023 and C.R. No.381 of 2023, the co-accused were allegedly found accepting bets and

they disclosed that the bets were accepted at the instance of respondent No.2. C.R. No.46 of 2023 seems to have been registered against the Respondent No.2 and other 17 persons who were allegedly conducting *Rasta Roko* for the inadequate and erratic water supply in the particular areas of Ichalkaranji. In FIR No.41 of 2024, the allegation is that few of the members of the security service provider, who were arraigned as co-accused, were wearing uniforms resembling the uniform of Maharashtra Police to provide security at an event organized by the applicant.

14. *Prima facie*, none of the aforesaid crimes has any nexus with the continuing unlawful activity for which the respondent No. 2 has been arraigned in C.R. No.132 of 2019, nor the alleged offences have such gravity as to merit cancellation of bail. *Prima facie*, it appears that the respondent No.2 is involved in political activities and the genesis of two of the aforesaid FIRs i.e. FIR No.46 of 2023 and FIR No.41 of 2024, is in political rivalry.

15. Mr.Jadhav, the learned Counsel for respondent No.2 submitted that an order of cancellation of bail cannot be passed in a light manner. Very strong grounds are required to be made out. In the case at hand, the aforesaid accusations do not furnish

a ground for cancellation of bail by any stretch of imagination.

16. Mr. Panchpor joined the issue by canvassing a submission that the grounds for cancellation of bail postulated by the Supreme Court in a catena of decisions are illustrative. In a given case, even the registration of FIRs for minor and bailable offences may furnish a justifiable ground for cancellation of bail.

17. I am afraid to accede to the submission of Mr.Panchpor. It is trite there is an essential distinction between initial rejection of an application for bail and cancellation of bail already granted. Very strong grounds are required for depriving an accused of his personal liberty already secured by an order of bail. The mere fact that, post grant of default bail under Section 167(2) of the Code, charge-sheet has been lodged by itself cannot be a ground to cancel the bail.

18. In the case at hand, the material on record does not indicate that there is any ground much less a very strong one for cancellation of bail. In two of the FIRs registered against the respondent No.2, he has been roped in on the basis of the statements of the co-accused. The fourth FIR clearly appears to have been lodged on account of political activities/rivalry.

19. I am, therefore, impelled to hold that no case is made out to exercise the extra-ordinary power to cancel the bail under Section 439(2) of the Code.

20. The application thus stands rejected.

(N. J. JAMADAR, J.)