

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2568 OF 2023**

Nikhil Arjun Dudhane

... Petitioner

versus

The State of Maharashtra

... Respondent

Mr. Amin Solkar with Mr. Gaurav Shenoy, Mr. Umang Shah, Ms. Faiza Gawandi, Mr. Mohammed Hamza, for Petitioner.

Mr. Prashant Jadhav, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 26 MARCH 2024

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 12 May 2023 passed by the learned Additional Sessions Judge, Ichalkaranji on an application for cancellation of bail (Exh. 73) in MCOC Case No.37 of 2020, arising out of C.R.No.307 of 2018 registered with Ichalkaranji Police Station for the offences punishable under Sections 120B, 397, 396, 395, 302, 307, 504, 506 of the Indian Penal Code and Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC, Act), whereby the learned Special Judge, MCOCA Court was persuaded to cancel the bail granted to the applicant by an order dated 28 October 2021.

3. Shorn of superfluities, the background facts necessary for the

determination of this Petition can be stated as under :

3.1 On 11 December 2018, Hemant (deceased) and Sanjay – the first informant, were allegedly assaulted by the applicant and the co-accused. Eventually, Hemant succumbed to the injuries. FIR came to be registered at Ichalkaranji Police Station at C.R.No.307 of 2018 for the abovementioned offences. The Petitioner came to be arrested on 12 December 2018. As the investigation revealed that the Petitioner was a member of an organized crime syndicate led by Umesh B. Arabale (A3) and the offences were committed by the members of the organized crime syndicate, the provisions contained in MCOC Act, were invoked on 20 January 2019. Post completion of investigation, chargesheet came to be lodged.

3.2 The Petitioner moved an application under Section 439 of the Code of Criminal Procedure, before the Special Court (MCOCA), Ichalkaranji. By an order dated 28 October 2021, the learned Special Judge was persuaded to allow the application and release the Petitioner on bail, subject to certain conditions. Condition Nos.4 and 5 read as under :

“4. Accused No.5 shall attend Ichalkaranji Police Station on first and third Sunday in between 1 p.m. to 4 p.m. of every month till recording of evidence of informant.

5. Accused No.5 not to commit any crime.”

3.3 The prosecution preferred an application for cancellation of bail (Exhibit 73) alleging, inter alia, that the Petitioner had committed breach of the conditions,

subject to which he was released on bail. Firstly, the Petitioner had not attended Ichalkaranji Police Station on the scheduled dates, as directed. Secondly, the Petitioner had committed crime leading to registration of C.R.No.644 of 2022 at Shivaji Nagar Police Station, Kolhapur, for the offences punishable under Sections 452, 323, 504, 506 of the Indian Penal Code and thereby there was breach of the condition of bail.

3.4 The Petitioner filed a reply contending, inter alia, that he had attended Ichalkaranji Police Station as directed. However, after few months, the officer at Ichalkaranji Police Station declined to note his attendance and mark his presence on the attendance book and asked him to approach the then Dy. Superintendent of Police. Despite efforts, he could not meet the then Dy. Superintendent of Police. He again approached Ichalkaranji Police Station, but the police declined to record his attendance.

3.5 As regards the registration of C.R.No.644 of 2022, it was contended that as he had demanded salary for the work he had rendered at the shop of the first informant in that case, a dispute arose and the first informant therein lodged a false report.

3.6 By the impugned order, the learned Sessions Judge was persuaded to allow the application holding, inter alia, that during the period 7 November 2021 to 15 May 2022, the applicant had appeared at Ichalkaranji Police Station on nine occasions

and remained absent 19 times. The learned Judge found that there was no substance in the claim of the Petitioner that the officers at Ichalkaranji Police Station had refused to mark his attendance as the Petitioner did not lodge a complaint with either the superior police officer or the Court. Since C.R.No.644 of 2022 was registered against the Petitioner, learned Judge held that there was breach of condition No.5 i.e. not to commit an offence. Hence, the application came to be allowed.

3.7 Consequent to the aforesaid order, the Petitioner came to be arrested.

4. Mr. Solkar, learned Counsel for the Petitioner submitted that the learned Special Judge committed an error in cancelling the bail on the ground that there was breach of the conditions. It was submitted that the Petitioner had, in fact, attended the police station, as directed. If the concerned police officer refused to mark the presence of the Petitioner, it would be unjustifiable to cancel the bail on the ground that there was breach of condition of attendance.

5. As regards registration of C.R.No.644 of 2022, learned Counsel for the Petitioner took the Court through the allegations in the FIR which indicate that the Petitioner was working in the shop of the first informant therein and dispute arose between the Petitioner and the first informant over the alleged removal of the Petitioner from the said employment. It was submitted that the bail which was granted to the Petitioner on merits could not have been cancelled lightly on such tenuous grounds.

6. Mr. Jadhav, the learned APP supported the impugned order. It was submitted that the Petitioner is a history-sheeter. The explanation sought to be offered by the Petitioner that though he had appeared at Ichalkaranji Police Station on the scheduled dates, the police officers declined to mark his attendance is imaginary and unbelievable. There was a clear breach of condition No.5 as the Special Court had specifically put the Petitioner to the term that he shall not commit any offence while on bail. Therefore, Writ Petition does not deserve to be countenanced, urged Mr. Jadhav.

7. I have given anxious consideration to the rival submissions. I have also perused the material on record. The question as to whether the learned Sessions Judge was justified in cancelling the bail granted to the Petitioner by invoking the power under Section 439(2) of the Code on the premise that there was breach of conditions of bail, arises for consideration.

8. Section 439(2) of the Code of Criminal Procedure, 1973, which empowers the High Court and the Court of Session to cancel the bail and commit a person to custody, reads as under :

“A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

9. On its plain reading, sub-Section (2) of Section 439 vests discretion in the High Court and the Court of Session to cancel the order of bail and direct arrest

of a person. The discretion, as is evident, is vested in the higher echelon of Courts. Though the circumstances in which the High Court or the Court of Session would be justified in ordering cancellation of bail are not explicitly spelled out, yet, it is well recognized that the said power has to be resorted to sparingly and in deserving cases only. The cancellation of bail stands on a different footing than the rejection of the bail at the first instance. There must be strong and substantive reasons to arrest a person who is set at liberty by admitting him to bail. Thus, sub-section (2) of Section 439 does not vest an unfettered discretion in the High Court or the Court of Session to cancel the bail.

10. Ordinarily, the bail can be cancelled on the ground of interference or attempt to interfere with the due course of administration of justice and abuse of liberty granted to the accused. In the case of **Raghubir Singh and Ors. V/s. State of Bihar**¹ the Supreme Court expounded the grounds on which the cancellation of bail may be justified, as under :

“22.....Generally the grounds for cancellation of bail, broadly, are interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the

1 (1986) 4 SCC 481

reach of sureties. He may abuse the liberty granted to him in indulging in similar or other unlawful acts. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution is not completing the investigation in sixty days, after the defect is cured by the filing of a chargesheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.

11. In the light of the aforesaid enunciation of law, reverting to the facts of the case, it is pertinent to note that the cancellation of bail was sought on the ground of non-compliance of the condition of the attendance at the police station. The learned Special Judge recorded that the Petitioner had marked his presence on 9 occasions and did not appear on 19 occasions. The said estimation of appearance and non-appearance primarily rests on the record maintained by the police. Where it is alleged that the accused had attended the police station and yet his attendance was not marked, determination often rests on the record maintained at the police station. I am conscious that there is a presumption that the official acts must be presumed to have been done in regular and official course of business. However, a situation is not completely inconceivable that the police officer may not mark or refuse to mark the attendance of the accused.

12. In such a situation to deprive the liberty, which was secured by a bail

order on merits, on the ground that the accused did not lodge complaint regarding the conduct of the concerned police officer, would be taking a very harsh view of the matter. Primarily the purpose of directing the accused to mark his presence at the police station after the chargesheet is filed is to ensure that the accused is available for the trial and does not abscond. From this standpoint, and considered through the prism of overarching constitutional guarantee of personal liberty, in my considered view, the bail could not have been cancelled on the ground that the Petitioner did not mark his presence at Ichalkaranji Police Station, as directed.

13. The second count of cancellation of bail for committing the offences punishable under Sections 452, 323, 504, 506 of the IPC, is required to be appreciated in the light of the fact that while releasing the accused arraigned for the offences punishable under the MCOC Act, 1999, the Court is enjoined to record a finding that if released on bail, the accused is not likely to commit any offence while on bail (Section 21(4) of the MCOC Act, 1999). The imposition of the condition that that the Petitioner shall not commit any crime (condition No.5 – extracted above), is required to be seen in the aforesaid context.

14. In the sense, the aforesaid condition makes the position of an accused, who is released on bail, vulnerable. Such an accused faces a constant risk of the bail being cancelled, merely upon the registration of a crime against him, *de hors* the genuineness of the case in which he is implicated. In my view, the accused cannot be

deprived of his personal liberty on a mere registration of crime against him. That would make the order of bail illusory and susceptible to cancellation.

15. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Ranjitsing Brahmajeetsing Sharma v/s. State of Maharashtra and Anr.**², wherein the Supreme Court enunciated that the satisfaction of the Court as regards the likelihood of the accused not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity.

16. An absolute condition, like in the present case, that the Petitioner shall not commit any crime is, therefore, required to be considered in the light of the nature of the infraction. If the offence which the accused has allegedly committed, while on bail in a MCOC case, has the trappings of ‘an organized crime’, the Court would be justified in construing the condition strictly and ordering the cancellation of bail. However, where the alleged offences have their genesis in the relationship which people forge in societal interactions like that of employer-employee relationship, a deeper scrutiny is warranted to determine whether personal liberty of the accused

² (2005) 5 SCC 294

deserves to be again curtailed.

17. I have perused the allegations in the FIR No.644 of 2022 registered against the Petitioner. The first informant alleges that a couple of months prior to the alleged occurrence, he had terminated the services of the Petitioner and on the day of the occurrence, the Petitioner raked up a quarrel as to why his services were terminated and demanded a sum of Rs.10,000/- towards the work which the Petitioner had allegedly rendered for the first informant. Evidently, the truthfulness of the allegations in the FIR would be a matter for trial, in the said case. However, the fact that the Petitioner had offered a version i.e. the FIR came to be lodged as he demanded wages for the work he had rendered for the first informant, which competes in probability, cannot be lost sight of. Such being the nature of the accusation in FIR No.644 of 2022, which has no connection with the organized crime, even remotely, the learned Sessions Judge could not have cancelled the bail on the ground that there was breach of condition not to commit any crime.

18. For the foregoing reasons, I am impelled to hold that the impugned order cancelling the bail deserves to be quashed and set aside.

19. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 12 May 2023 cancelling the bail in Special

MCOC Case No.37 of 2020 stands quashed and set aside.

(iii) The bail order dated 28 October 2021 in Special MCOC Case No.37 of 2020 stands restored.

(iv) The Petitioner be released on bail in Special MCOC Case No.37 of 2020 on the same conditions, and bail bonds and surety already furnished by the Petitioner.

(v) To rule out the possibility of controversy, the Petitioner shall attend Ichalkaranji Police Station on the dates specified in the order dated 28 December 2021 without fail and the Senior Police Inspector of Ichalkaranji Police Station shall ensure that proper record about the attendance of the Petitioner is maintained and acknowledgment is given to the Petitioner whenever he marks his presence on the scheduled dates.

(vi) Rule is made absolute in the aforesaid terms, with no order as to costs.

(N.J.JAMADAR, J.)