

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

**CRIMINAL APPLICATION NO. 1151 OF 2018
IN
CRIMINAL BAIL APPLICATION NO. 2171 OF 2017**

The State Of Maharashtra ... Applicant
Versus
Yamesh Dilip Darekar ... Respondent

.....
Mr. Mayur S. Sonavane, APP, for the Applicant-State.

Mr. Prashant Pandey a/w Irfan Unwala, Dinesh Jadhvani, for the
Respondent.

Mr. Bajrang Desai, PSI, Samta Nagar Police Station, present.
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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 22nd MARCH, 2024.

P.C.

The State has moved this application for cancellation of the bail granted to the respondent-accused precisely on the ground that after his release in this crime on 14th November, 2017, the respondent has committed breach of following two conditions of the order of bail, which are as follows:

- (v) The applicant/accused should not commit any crime in future while enjoying liberty under this order.
- (vi) Failure to abide by the conditions so imposed shall warrant cancellation of bail granted to the applicant/accused.”

**REKHA
PRAKASH
PATIL**

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Rekha Patil

2 I heard learned Counsel for the respondent at length and learned APP.

3 At the outset, since the respondent, despite service, remained absent and, therefore, a Non Bailable Warrant was issued against him and is now placed into judicial custody.

4 Mr. Mayur Sonavane, learned APP, has placed on record a chart depicting various offences registered against the respondent at several police stations pending adjudication. It is also a matter of record that the respondent has been externed for a period of two years vide an order No. ह. आ. क्र. ७७/सी/४३/परि —१२/२०१५ दिनांक ०१/०६/२०१५.

5 According to Mr. Sonavane, after the release of the respondent on bail by this Court on 14th November, 2017, the respondent had indulged in as many as nine cases which are depicted in the chart submitted today on record. According to Mr. Sonavane, the respondent has a tendency to commit crimes on a trifle reasons which from evident from the chart. He submits that the respondent is on bail in all the cases.

6 Per contra, Mr. Prashant Pandey, learned Counsel for the respondent, would argue that the respondent, though had a bad past, now wants to lead a happily with his family and newly born child. He submits that in most of the cases the respondent is in jail due to political vendetta and till date the respondent has not been convicted in any of the offences.

7 Learned Counsel has pressed into service following two decisions;

- (i) **Khajim @ Khajimulla Khan vs. The State of Karnataka, in Criminal Revision Petition No. 1364 of 2019, dated 12th December, 2019;**
- (ii) **Renjith s/o Raghavan vs. State of Kerala in Criminal MC No. 854 of 2023, dated 3rd March, 2023.**

8 The facts in the case of **Khajim @ Khajimulla Khan** as well as **Renjith** are distinguishable *vis-a-vis* facts in the instant case are concerned. It would be apposite to extract para 8 of the decision of **Khajim @ Khajimulla Khan, Karnataka High Court**, which reads as

under;

*“8. The only question which arises before this Court is that merely because there is a breach of condition the Court below is justified in canceling the bail. When the Court below has considered the material facts and has granted the anticipatory bail on 15.11.2017 and it is not the case of the respondent-State that he is not regular in attending the trial and it is also not alleged that the accused has threatened the witnesses and he is coming in the way of the trial, but the only question which has been raised is that two more cases have been registered against him and there is a breach of condition. It is the duty of the Court to satisfy itself on the basis of the material placed on record that whether the said breach of condition goes to the root of the trial in question. It is also well settled proposition of law that once the bail has been granted, it 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. This proposition of law has been laid down by the Hon'ble Apex Court in the case of **Subhendu Mishra** quoted supra, wherein at paragraph No.4 it has been observed as under:*

“4. In Dolat Ram v. State of Haryana [(1995) 1 SCC 349 : 1995 SCC (Cri) 237] while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, it was opined

by this Court: (SCC pp. 350-51, para 4).

"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."

9 The Karnataka High Court has, in turn, drew support from

the judgment in the case of **Subhendu Mishra** of the Hon'ble Supreme Court wherein the Supreme Court has considered the ratio laid down in the case of **Dolat Ram v. State of Haryana, (1995) 1 SCC 349**. The relevant para of the judgment is extracted below for a better understanding.

"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."

10 No doubt, the respondent had abused the concession granted to him by indulging into various offences, post bail. He appears to have been booked in as many as nine cases by the concerned police station. Although, there is no apprehension of his abscondence justifying cancellation of bail, it cannot be mechanically cancelled without considering any cogent reason or circumstance.

11 Having considered the fact that the respondent has not been convicted any of the offence and has been on bail in all the offences, coupled with the fact that he wants a fair chance to lead a unblemished life in future with his wife and newly born child, an opportunity needs to be given to improve him to and to exhibit better conduct in future.

12 I am convinced that if the applicant is given an opportunity as stated herein-above, he would turn into a good man. It is impressed upon him that he shall continue to attend the trial Court till its conclusion and shall not indulge in any criminal activity in future.

13 Now, the order.

:ORDER:

- (i) Respondent- Yamesh Dilip Darekar be released on executing a fresh PR bond in the sum of Rs.20,000/- with two sureties in the like amount to the satisfaction of the trial Court.
- (ii) It is made clear that in case the respondent commits a single breach in attending the trial Court or commits any offence, the trial Court is at liberty to cancel his bail if it is brought to the notice by the Prosecution Agency that the respondent has breached any of the conditions.
- (iii) The respondent shall attend the trial Court on the dates fixed therein.

14 At this stage, learned Counsel for the respondent seeks indulgence to grant cash security in lieu of surety.

15 Let the respondent be released on furnishing cash security of Rs.20,000/- for a period of six weeks.

16 Application is disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]