

Shailaja

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

CRIMINAL APPLICATION NO.383 OF 2019

Karim Abdullah Khan	]	Applicant
Vs.		
1. The State of Maharashtra	]	
2. Ameershad Khan	]	Respondents

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Ms. K.R. Shah a/w Ms. Risha Rathod, for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent No.1 – State.

Mr. Sudeep Pasbola a/w Mr. Sankalp Vichare i/b Ms. Jyoti Sahu, for Respondent No.2.

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CORAM	: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON	: 12th MARCH, 2024.
PRONOUNCED ON	: 14th MARCH, 2024.

ORDER:

1. By this application, the applicant prays for cancellation of bail granted by the trial Court to respondent No.2 – Ameershad Khan on 19th October, 2019 in view of Section 439 (2) of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”).

2. Applicant is the original complainant in C.R. No.579 of 2018 registered with Vakola Police Station on 21st December, 2018 for the offences punishable under Sections 120 (B), 302 r/w 34 of the Indian Penal Code (for short "I.P.C"). Respondent No.2 and other co-accused were arrested during investigation. Respondent No.2 was arrested on 4th February, 2019. Respondent No.2 was granted bail as above by the Additional Sessions Judge, City Civil Court, Mumbai. Present application is moved precisely on the ground that the trial Court has ignored vital material on record which indicates complicity and involvement of the respondent No.2 in the alleged offence of murder as well as main conspirator who hatched conspiracy along with rest of the accused to eliminate deceased Mohammad Abdullah Behrul Khan.

3. With the help of the learned Counsel for the applicant, I have gone through the statements of the witnesses, especially, Shubham Ramu Jaiswal, Abujar Abules Shaikh, Mohammad Asif Shakil Shaikh, Mohammad Hasan Behrul Amin Khan, Mohammad Shafi Mohammad Ali and Sunil Yallappa Jadhav.

4. On the other hand, Mr. Pasbola, while strongly objecting the application seeking cancellation of bail of the respondent No.2 argued that merely because most of the witnesses had stated that immediately after the incident in question, the respondent No.2 had given a signal of *thumbs up* would not necessarily mean that he is a co-conspirator. He would argue that the Court should be slow in cancelling the bail unless there are strong grounds to cancel the bail which has been granted on merits.

5. Family of the respondent No.2 and the deceased Mohammad Abdullah Behrul Khan are residents of the same locality and were well acquainted with one another. One Rizvi builder had started a project of development of SRA. Respondent No.2 was looking after the development work which was assigned to him by one Abees Rizvi. Somewhere in the month of December, 2016, Abees Rizvi was killed in a terrorist attack at Istanbul, Turkey. Thereafter, father of Abees Rizvi viz. Aktar Rizvi took over the charge of the development project. Supervision work which was assigned to the respondent No.2 was given to deceased Mohammad Abdullah Behrul Khan.

6. On 15th February, 2017, respondent No.2 came to the shop of the deceased and there was verbal altercation between them. Respondent No.2 alleged to have threatened the deceased. Consequently, on 21st December, 2018 at 2.45 p.m, son of the respondent No.2 and others assaulted deceased Mohammad Abdullah Behrul Khan. Son of the respondent No.2 assaulted the deceased with an iron rod. Due to the multiple assaults by the assailants with dangerous weapons, there were around 24 injuries on the vital parts of the body of the deceased to which, he succumbed.

7. The trial Court while granting bail observed that only material against respondent No.2 as transpired from the record was that there was a meeting between the respondent No.2 and other assailants just before murder of the deceased and, after the incident, respondent No.2 had raised his thumb to praise the alleged act of the assailants.

8. Admittedly, the respondent No.2 did not participate in the crime. He was arrested after surrender. He was in custody for eight months. He was 61 years old at the time of granting bail with

various ailments. It appears that there were no criminal antecedents against the respondent No.2. He is a permanent resident of Mumbai and, therefore, the trial Court granted him bail. It was argued on behalf of the respondent No.2 before the Trial Court that despite absence of antecedents *qua* respondent No.2, merely because his daughter was married to the son of Haseena Parkar who is the real sister of fugitive Dawood Ibrahim, his bail application should not be rejected. Admittedly, daughter of respondent No.2 thereafter became a widow and remarried. It is argued that the respondent No.2 has, therefore, been falsely implicated.

9. I have gone through the statements of the witnesses. Almost all of them appeared to have stated before the Police that the respondent No.2 had just raised his thumb after the incident. None of the witnesses stated that the respondent No.2 was one of the assailants.

10. Argument of the learned Counsel for the applicant that the respondent No.2 had a grudge that his son Lala died because of some black magic practiced by the deceased and, therefore, he had a motive to eliminate the deceased could be an aspect which will be

considered during trial and not at the time of granting bail. Some of the witnesses have stated against respondent No.2 which can be said to be hearsay evidence which is not admissible.

11. It is needless to state that criminal conspiracy is not easy to prove. The conspirators invariably deliberate, plan and act in secret over a period of time. Role of each the co-conspirators can only be unearthed during trial. *Prima facie*, there is nothing to show that the respondent No.2 was involved in the alleged conspiracy.

12. There is a distinction between rejection and cancellation of bail. Rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of an individual and hence, it must not be lightly resorted to.

13. The salient features to be considered while cancellation of bail are;

- (i) in case the accused misuses his liberty by indulging in similar criminal activity;
- (ii) interferes with the course of investigation;
- (iii) attempts to tamper with evidence or witnesses;

(iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation;

(v) there is likelihood of his fleeing to another country;

(vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, and

(vii) attempts to place himself beyond the reach of his surety, etc.

This has been laid down by the Supreme Court in the case of **Raghubir Singh Vs. State of Bihar**¹.

14. In the case at hand, none of the aforesaid grounds have been raised.

15. It is trite law that cancellation of bail can be done in cases where the order granting bail by the trial Court suffers from serious infirmities resulting into miscarriage of justice. As already stated hereinabove, what has been weighed with the Trial Court has already been discussed. The trial Court has not ignored any relevant material and has reached a just conclusion before granting bail to the respondent No.2.

¹ (1986) 4 Supreme Court Cases 481

16. Having examined the impugned order passed by the trial Court, I found no perversity or any infirmity which has resulted into miscarriage of justice.

17. As such, the order impugned does not warrant interference and hence, the application needs to be rejected. Consequently, the application stands rejected.

[PRITHVIRAJ K. CHAVAN, J.]