

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPLICATION NO. 70 OF 2024**

Altaf Ayub Charoliya	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Mr. Nikhil S. Kamble for applicant.

Mr. Tanveer G. Khan, APP for respondent No.1-State.

Mr. M. M. Chaudhari a/w. Mr. Shaikh Atique-ur-Rehman for respondent No.2.

Mr. Mangesh H. Sant, PSI, Vakola Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 21st OCTOBER, 2024**

P.C. :

1. Heard learned counsel for the applicant, the learned APP for the respondent No.1-State and the learned counsel appearing for the contesting respondent No.2 (accused).

2. By this application, the applicant is seeking cancellation of bail granted to respondent No.2 by the Court of Metropolitan Magistrate, Bandra, Mumbai, by order dated 04.08.2023. It is brought to the notice of this Court that when an application for cancellation of bail was moved before the Sessions Court, by order dated 21.09.2023, the Sessions Court failed to appreciate the contentions raised by the applicant (first informant) and the said application was rejected.

3. The learned counsel for the applicant brought to the notice of this Court the chronology of events, which led to the aforesaid two orders passed

by the Magistrate and the Sessions Court. It is submitted that despite respondent No.2 showing scant regard for the rule of law and absconding and despite his bail being cancelled, his bail application, after being eventually arrested, has been allowed in a most casual manner by the Magistrate. The Sessions Court also failed to appreciate the conduct of respondent No.2, while rejecting the application for cancellation of bail filed by the applicant. It was submitted that although the co-accused person i.e. the mother of respondent No.2, could also be said to be liable for cancellation of bail, considering the fact that she is a senior citizen aged about 75 years, the applicant has filed the present application only against respondent No.2, who could be said to be the main accused person in the present case. The orders of the Courts, relevant to the chronology of events, were highlighted, while pressing the prayer made on his behalf.

4. On the other hand, the learned counsel for respondent No.2 submitted that due to ill-health of mother of respondent No.2 i.e. the co-accused person, he could not surrender immediately after the bail granted to the accused persons, was cancelled on 23.10.2021. It was submitted that after the accused persons were arrested on 03.08.2023, the Magistrate allowed the bail application on merits, which was appreciated by the Sessions Court also, while rejecting the application for cancellation of bail and therefore, this Court may not allow the present application. It was submitted that in the alternative, this Court may consider remanding the matter back to the Magistrate for consideration afresh. The learned counsel for respondent No.2 has tendered an affidavit in reply on behalf of the said respondent. The same is taken on record.

5. This Court has considered the rival submissions, in the backdrop of the material available on record. In order to properly appreciate the rival submissions, it is necessary to briefly refer to the chronology of events.

6. In the present case, the FIR was registered on 19.04.2019 against respondent No.2 and his mother for offences under Sections 465, 467, 468, 471 and 420 read with Section 34 of the Indian Penal Code, 1860 (IPC). The accused persons, including respondent No.2, were arrested on 19.04.2019 itself. The grievance of the applicant (first informant) was that the accused persons, including respondent No.2, had taken huge amount of ₹ 1.5 crores from him for sale of a particular piece of land. An impression was given to the applicant that the land belonged to the accused persons and in that context, reference was made to certain orders passed by competent authorities, apart from relying on other documents i.e. agreements, etc. The applicant eventually realised that he had been cheated and when he approached the offices of the concerned authorities, it was found that the orders upon which reliance was placed by the accused persons, were forged and on the basis of such allegations, the FIR was registered.

7. On 09.05.2019, respondent No.2 and the co-accused person i.e. the mother were granted bail, when the co-accused person issued 3 cheques for an amount of ₹ 50 lakhs each in favour of the applicant. The impression given to the Court, which granted bail, was that the amount was being returned in the form of the aforesaid cheques. Subsequently, the cheques bounced and in that light, the applicant applied for cancellation of bail.

8. The said application for cancellation of bail came up for consideration before the Sessions Court on 23.10.2021. In the said order, the Sessions Court held as follows:

“

ORDER

- . The accused was granted bail in Crime Number 196/2019 by my learned Predecessor vide order dated 9/5/2019 passed in Bail Application No. 1079/2019.
- 2] In the said order dated 9/5/2019 it was specifically observed that the present applicant/original complainant had appeared and submitted that the matter was settled and he received a cheque of Rs.1.50 Crores towards the refund of amount. That was also one of the reasons for granting bail to the accused, as it appears. The present applicant now submits that the said cheque was not honoured and prayed for cancellation of bail granted to the accused. During pendency of this application the accused again gave cheques for Rs.1.25 Crores to the present applicant on 5/12/2020. The applicant submits that the said cheque is also dishonoured. The accused thereafter did not remain present. Though so many chances were given the accused did not arrange for conducting the matter and consequently the arguments of applicant were heard and the matter was closed for order.
- 3] From the events mentioned above, it is very much clear that the accused never had any intention to pay to the applicant and gave cheques to the applicant only to get released. It also happened not once but twice. Such a conduct leaves no room to doubt that the accused did not have any intention to keep his own words and thus has misused the liberty. Therefore, he does not deserve to be at large any more. Hence the order :-

ORDER

- 1] Application is allowed.
- 2] Bail granted to the respondent No. 1 Salim Musa Khan in Crime Number 196/2019 vide order dated 9/5/2019 passed in Bail Application No. 1079/2019 is cancelled.
- 3] Inform Vakola police station accordingly.”

9. Accordingly, the bail granted to the respondent No.2 was cancelled and he was required to surrender. The record shows that he did not abide by the said order and he also did not challenge the said order in accordance with law. Eventually, he was arrested on 03.08.2023 i.e. almost 2 years after his bail was cancelled by the above-quoted order.

10. Immediately, on 03.08.2023, he moved an application for bail before the Magistrate, which reads as follows:

“MAY IT PLEASE YOUR HONOUR:

That the accused above named has/have been arrested by above Police Station on 03.08.2023 for the above mentioned offence.

That accused is/are innocent. That allegations are false.

The accused is/are permanent resident of Mumbai and not likely to abscond if released on bail.

The accused shall co-operate in the investigation and therefore it is humbly prayed:

- a) that this Hon’ble Court may be pleased to release the accused on bail on any terms and conditions.
- b) that this Hon’ble Court may be pleased to allow cash bail.
- c) that such other and further reliefs.

And for this act of kindness, the Accused ever pray."

11. A perusal of the above-quoted application shows that the applicant therein i.e. respondent No.2 did not disclose the fact that he was arrested, for the reason that his bail was cancelled by an order passed as far back as on 23.10.2021 by the Sessions Court.

12. When the said application came up for consideration before the Magistrate on the same day, the file was perhaps not traced out and on that basis, the respondent No.2 was released on provisional bail of ₹ 15,000/-.

13. On the next day i.e. 04.08.2023, when the application came up for consideration, it was brought to the notice of the Magistrate that the bail earlier granted to respondent No.2, was cancelled by the Sessions Court and that was the reason for his arrest. Despite taking note of the aforesaid fact, surprisingly, the Magistrate, in a most casual manner, observed that since the accused were now ready to conduct the trial by attending the Court, the provisional bail granted to respondent No.2 was confirmed, with a further condition that he would execute a P.R. Bond of ₹ 1 lakh alongwith sureties.

14. The reasoning contained in paragraph No.5 of the order dated 04.08.2023 of the Magistrate, indicates that the Magistrate failed to take into consideration the conduct of the accused persons, including respondent No.2, of they having avoided the process of law for almost 2 years, despite cancellation of their bail on the ground of having taken undue advantage of the liberty granted by the Sessions Court, while allowing their bail application, by order dated 09.05.2019.

15. In this situation, when the applicant approached the Sessions Court for cancellation of bail, the Sessions Court, by order dated 21.09.2023, rejected the same. The reasoning of the Sessions Court is found at paragraph No.7 of the said order, wherein it was held that since bail of an accused can be cancelled only on the ground of interference with due course of administration of justice, evasion or attempt to evade the due course of justice, abuse of concession granted to accused and possibility of absconding, the applicant herein had failed to made out such a case. On this basis, the said application was rejected.

16. This Court is unable to understand the logic and reasoning adopted by both, the Magistrate as well as the Sessions Court, in the facts and circumstances of the present case. In the above-quoted order dated 23.10.2021, while cancelling the bail of respondent No.2, the Sessions Court recorded in detail as to how the accused persons had misused their liberty and they never had any intention to abide by the undertakings given to the Court. Despite the aforesaid observation and despite the accused persons, including respondent No.2, avoiding the process of law for almost 2 years till they were eventually arrested on 03.08.2023, the Magistrate, in a most casual manner, again granted bail to respondent No.2.

17. The Sessions Court also completely failed to appreciate the conduct of the accused persons, particularly respondent No.2, and proceeded to reject the application for cancellation of bail. This Court is of the opinion that if there was to be a case for cancellation of bail on the ground of interference with the administration of justice or evasion of due course of justice or abuse of concession granted to accused, this was the case in which bail deserved to be cancelled. Yet, the Sessions Court proceeded to hold against the applicant in a most erroneous manner.

18. This Court is of the opinion that if the orders of the Magistrate and the Sessions Court, in the present case, are sustained, it would be a blow to the rule of law as also the Majesty of law and Courts. The applicant has made out a strong case for cancelling the bail granted to respondent No.2 by order dated 04.08.2023 passed by the Magistrate. This Court would have cancelled the bail of the co-accused person also, but for the fact that she is a woman and a the senior citizen aged about 75 years and in any case, the applicant has not sought cancellation of her bail.

19. It is to be noted that respondent No.2 appears to be a habitual offender as the applicant has placed on record a chart showing criminal cases registered against respondent No.2. The said chart shows that there are total 7 criminal cases registered against respondent No.2, including the present case. In 5 out of 7 cases, respondent No.2 is facing prosecution for identical offences involving cheating and forgery, including offence under Section 467 of the IPC, which provides for maximum punishment of imprisonment for life. No sympathy can be shown to such a person who has taken the Courts for a ride and who has shown scant regard for the rule of law.

20. Accordingly, the application is allowed. Bail granted to respondent No.2 is cancelled. He shall surrender before the concerned Magistrate within one week from today, failing which the police shall take appropriate steps to arrest him. It is made clear that after the respondent No.2 is arrested, he may take recourse to such remedies as available in law.

21. Needless to say, in view of the reasons stated above, the order passed by the Sessions Court on 21.09.2023 is effectively set aside, insofar as respondent No.2 is concerned.

(MANISH PITALE, J)