

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.120 OF 2024****Sukhchand Mahesh Pathak*****...Appellant*****V/s.****The State of Maharashtra and Anr.*****...Respondents***

Mr. Sandeep Mishra *for the Appellant.***Mr. Ashok R. Metkari,** *APP for Respondent No.1-State.***Mr. Sachin Ramrao Pawar** *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.**Dated : 20 June 2024.****P.C. :**

1) This is an appeal under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST** Act), challenging order dated 22 January 2024 by which the application filed by the original Complainant at Exhibit 15 has been allowed and the bail granted to the Appellant by order dated 7 February 2020 is cancelled.

2) It appears that the Appellant is arraigned as an accused in Sessions Case No.52 of 2020 for offences punishable under Sections 504 and 506 of the IPC and Sections 3(1)(r)(s) of the SCST Act. It appears that the

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Appellant was arrested and filed application for regular bail. By order dated 7 February 2020 after completion of investigation and filing of charge-sheet, the learned Special Judge directed release of the Appellant on bail. It appears that while passing order dated 7 February 2020 the original Complainant was not heard, which is a requirement under the provisions of Section 15-A(3) and (5) of the SCST Act. It appears that the original Complainant filed application seeking cancellation of bail at Exhibit-15 on the ground that he was not heard while granting bail to the Appellant. The learned Special Judge has proceeded to allow the application filed by original Complainant and has cancelled the bail granted to the Appellant.

3) Perusal of order dated 22 January 2024 would indicate that the only reason why bail already granted to the Appellant is cancelled is non granting of opportunity of hearing to the original Complainant, which is a mandatory requirement under Section 15-A(3) and (5) of the SCST Act.

4) I have heard Mr. Mishra, the learned counsel for the Appellant, who would submit that once bail is granted, the same court cannot cancel the bail unless a specific case is made out about any misconduct being committed by the accused or happening of supervening circumstances. That mere perversity in the order cannot be a ground for the same court to cancel the bail. That any perversity in the order of bail can be corrected by superior court and not by the same court. In support of his submission, Mr. Mishra has relied upon decision of the Supreme Court in *Ranji Singh vs. State of*

Madhya Pradesh and Ors.*¹** and decision of this Court in ***Rajesh Thomas Menzes vs. The State of Maharashtra,²

5) *Per contra*, Mr. Sachin Pawar, the learned counsel for Respondent No.2/original Complainant would strenuously oppose the appeal. He would submit that non grant of opportunity of hearing to the original Complainant was not the only ground on which cancellation of bail was sought. He would submit that cancellation of bail was also sought on account of subsequent involvement of the same accused in another crime. He would submit that the facts and circumstances of the case are such that, the bail granted in favour of the Appellant deserve to be cancelled. He would pray for dismissal of the appeal.

6) I have also heard Mr. Ashok Metkar, the learned APP for the Respondent -State.

7) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the law appears to be well settled where same court cannot entertain an application for cancellation of bail unless any misconduct is committed by the accused or there is any violation in respect of the conditions of the bail or where any new intervening circumstances have taken place. Merely because the order is wrong, the same cannot be cancelled by the same court. This principle is reiterated in number of judgments. It would be profitable to make a

1. (2013) 16 SCC 797

2. Criminal Application No.491 of 2023 decided on 24 January 2024.

reference of the observations of the Apex Court in paragraph 19 of the judgment in **Ranjit Singh** (supra) as under:-

19. It needs no special emphasis to state that there is distinction between the parameters for grant of bail and cancellation of bail. There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant material, it can be annulled by the superior court. We have already referred to various paragraphs of the order passed by the High Court. We have already held that the learned trial Judge has misconstrued the order passed by the High Court. However, we may hasten to add that the learned Single Judge has taken note of certain supervening circumstances to cancel the bail, but we are of the opinion that in the obtaining factual matrix the said exercise was not necessary as the grant of bail was absolutely illegal and unjustified as the court below had enlarged the accused on bail on the strength of the order passed in Ranjeet Singh v. State of M.P., MCRC No.701 of 2013 remaining oblivious of the parameters for grant of bail under Section 439 Cr.P.c. It is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course.

8) Same view is reiterated by the learned Single Judge of this Court in **Rajesh Thomas** (supra).

9) In the present case, the error committed by the learned Special Judge is however fatal. It is a mandatory requirement under Section 15-A(3) and (5) of the SCST Act to give notice to the original Complainant before deciding bail application of the accused, involved in offence under the provisions of

the SCST Act. This is not a directory requirement and the requirement needs to be scrupulously followed. In my view, the learned Special Judge had committed an error in entertaining and deciding the application for bail referred by Appellant in absence of any notice to the original Complaint.

10) The issue is whether the bail already granted to Appellant could have been cancelled for violation of those mandatory requirement under Section 15-A (3) and (5) of the SCST Act. In my view correct course of action to be adopted after considering the unique facts and circumstances of the present case is to restore the bail application of the Appellant before the learned Special Judge, who shall proceed to decide the same afresh after grant of opportunity of hearing to Respondent No.2.

11) The appeal accordingly partly succeeds. Order dated 22 January 2024 passed by the learned Special Judge in Sessions Case No.52 of 2020 is set aside. The bail application filed by the Appellant before the learned Special Judge shall stand restored. The learned Special Judge shall proceed to decide the same on its own merits after grant of opportunity of hearing to Respondent No.2. Till the application for bail is decided afresh, the interim protection granted by this Court in favour of the Appellant shall continue to operate on the same terms and conditions as indicated in the order dated 7 February 2020.

12) With above directions, the appeal is disposed of.

[SANDEEP V. MARNE, J.]