

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.390 OF 2024**

Yogesh Changdev Pawar and Anr.*Appellants*

V/s.

The State of Maharashtra and Anr.*Respondents*

Mr. Amit Icham *for the Appellants.*

Mr. Narayan G. Rokade *with Mr. Udaysinh Deshmukh, Mr. Abhang Suryawanshi, Ms Pratibha Pawar and Mr. Somnath Ugalmugale for Respondent No.2.*

Ms Payal Upadhyay *with Mr. Anant Upadhyay i/b. M/s. ANP Chambers for Respondent No.2.*

Ms Shilpa K. Gajare-Dhumal, *APP for Respondent-State.*

Mr. Bajirao Baburao Mahajan, Sub-Divisional Police Officer, Manmad, Yeola Taluka-Police Station, District-Nashik (Rural), present.

CORAM : SANDEEP V. MARNE, J.

Dated : 3 July 2024.

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P.C. :

1) On 21 June 2024 when the criminal appeal was listed before this Court, following order was passed:-

- 1) The learned counsel appearing for the Appellants, seeks leave to withdraw the Appeal on the ground that the Appellants have already been released on bail by the Special Court.
- 2) The learned counsel for Respondent No.2 would oppose withdrawal of the Appeal submitting that the Appellants did not

disclose before the Special Court while seeking regular bail that the present Appeal was pending before this Court. According to him, this is in violation of the ratio of the judgment of the Apex Court in Kusha Duruka Vs. The State of Odisha, Cri. Appeal No.303 of 2024 decided on 19.01.2024. Additionally, he would complain that the First Informant was not given notice or heard while grant of regular bail to the Appellants.

3) The Respondent No.2 would be at liberty to file appropriate application before the Special Court for cancellation of bail granted to the Appellant, both on the grounds of failure to inform the Special Court about pendency of the present Appeal, as well as, non-grant of opportunity of hearing to Respondent No.2 while granting regular bail. Such application, if and when filed by Respondent No.2, shall be dealt with by the learned Special Judge on its own merits.

4) In the meantime, the Appellants to file Affidavit explaining the reasons for non-disclosure of pendency of the present Appeal while seeking regular bail from the Special Court. Affidavit to be filed within one week.

5) List the Appeal 'for directions' on 3 July 2024

2) In pursuance of the directions given by this Court, an affidavit has been filed by Mr. Yogesh Pawar stating the circumstances, under which rejection of earlier bail application and pendency of present appeal were not disclosed in the fresh application for bail.

3) A perusal of the second bail application would indicate that there is a specific averment in paragraph 10 thereof that the Applicants therein had not previously filed any application for bail. The said declaration is obviously false to the knowledge of the Appellant. The learned Sessions Judge appears to have granted bail to the Appellants essentially taking note of the fact that investigations were complete and charge-sheet was filed. In my view, the Appellant ought to have been more vigilant in the manner in which second

bail application was filed and prosecuted. As directed by the Apex Court in *Kusha Duruka Vs. The State of Odisha*¹ as well as the Circular issued by this Court on 23 February 2024, it was mandatory for the Appellants to disclose rejection of earlier bail application and pendency of the present appeal before this Court. The Appellants apparently suppressed the said fact and filed second bail application by making an erroneous declaration therein. For such conduct, the Appellants need to be mulct with costs while granting permission to withdraw the present appeal.

4) So far as failure on the part of the Additional Sessions Judge to issue notice to Respondent No.2 and to grant opportunity of hearing to her is concerned, the same appears to have been in violation of provisions of Section 15-A of the SCST Act. Respondent No.2 would be accordingly at liberty to file appropriate application for cancellation of bail granted in favour of the Appellants before the learned Additional Sessions Judge, Yeola.

5) Accordingly, the Appellants are permitted to withdraw the present Appeal subject to payment of costs of Rs.10,000/- to High Court Legal Aid Fund. Costs to be paid within a period of two weeks from today and receipt thereof shall be produced before the Additional Sessions Judge, Yeola, on the next date of hearing. In the event of failure on the part of Appellant to produce receipt of payment of costs within the stipulated period, the Additional Sessions Judge shall proceed to cancel the bail granted in favour of Appellant.

¹ Cri. Appeal No.303 of 2024 decided on 19.01.2024

6) With the above directions, the appeal is permitted to be withdrawn and disposed of.

[SANDEEP V. MARNE, J.]