

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2011 OF 2024
IN
BAIL APPLICATION NO.286 OF 2024

Jyoti Rajaram Khese

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Ms. Saba Shaikh, for the Applicant in IA/2011/2024.

Mr. Amit Icham i/b Mr. Sujay S. Palshikar, for the Applicant in BA/286/2024.

Mr. Y. M. Nakhwa, APP, for Respondent No. 1 – State.

Mr. Vinoy Kumar Choubey (Through V.C.), Commissioner of Police, Pimpri Chinchwad, present.

Mr. Vishwanath Chavan, Senior Police Inspector, Bhosari Police Station, Pimpri Chinchwad, District – Pune, present.

Mr. Santosh Jaysingh Pawar, Respondent No.2, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 21 OCTOBER 2024

P.C.:

1. This Court by Order dated 19th March 2024 passed in Bail Application No.286 of 2024, granted bail to the Respondent No.2 – Santosh Jaysingh Pawar. The present Interim Application has been filed on 9th May 2024 seeking cancellation of bail. This Interim Application was listed before a learned Single Judge on 13th June 2024, 4th July 2024 and 2nd September 2024. On 2nd September 2024, a learned Single Judge directed the Registry to verify and place the matter before

the appropriate Court.

2. As by this Interim Application prayer is made to cancel the bail granted by this Court, the matter is placed before this Court on 9th September 2024.

3. This Court by Order dated 9th September 2024, issued notice to the Respondent No.2 and made the same returnable on 23rd September 2024. By said Order dated 9th September 2024, in addition to Court's notice, the Investigating Officer was directed to intimate the next date of hearing to the Respondent No.2. On 23rd September 2024, the Investigating Officer stated that Respondent No.2 has been informed about the date of hearing of this Interim Application and obtained the acknowledgment of the Respondent No.2. In spite of the same, Respondent No.2 failed to remain present in the Court on 23rd September 2024. Accordingly, by Order dated 23rd September 2024, this Court issued bailable warrant to the Respondent No.2 in the sum of Rs.10,000/- returnable on 7th October 2024.

4. On 7th October 2024, learned APP sought time to comply with said Order dated 23rd September 2024. Therefore, fresh bailable warrant was issued to the Respondent No.2 in the sum of Rs.10,000/- and made the same returnable on 14th October 2024. On 14th October 2024, Interim Application has been adjourned to 16th October 2024. In the Order dated 16th October 2024, this Court recorded the conduct of

the Police Officials and the manner in which the Police Authorities are acting, in connivance with the Respondent No.2 to protect him. The relevant part of said Order dated 16th October 2024 reads as under:-

“5. It appears that, Mr. R. A. Bhaskar, Police Sub-Inspector of Bhosari Police Station, Pimpri Chinchwad issued a letter dated 1st October 2024. The said letter reads as under:-

 भोसरी पोलीस स्टेशन, पिंपरी चिंचवड आयुक्तालय. पत्ता:- पुणे नाशिक हायवे, सी. आय. आर. टी. जवळ, एमआयडीसी भोसरी, पुणे- २६ फोन नं. ०२०- २७९२४७२८ ई मेल आयडी- psbhosari.pcp@mh.gov.in	
जावक क्रमांक :- ७४३५/२०२४, भोसरी पोलीस स्टेशन, पिंपरी चिंचवड.	दिनांक :- ०१/१०/२०२४
समजपत्र	
प्रति, संतोष जयसिंग पवार, वय-४५ वर्ष, धंदा- शेअर मार्केट, रा. समृद्धी अपार्टमेंट, कर्मभुमीनगर, लोहगाव, वाघोली रोड, पुणे, मोबाईल नंबर- ९९४६३९२८०४, ९२७००५४६९८. उपरोक्त विषयान्वये आपणास कळविण्यात येते की, भोसरी पोलीस स्टेशन, पिंपरी चिंचवड, पुणे येथे आपणावर गुन्हा रजि.नं. १२०/२०२३ भा.द.वि.कलम ४०६, ४०९, ४२०, भादवि सह कलम ३ एम.पी.डी.ए. अॅक्ट प्रमाणे गुन्हा दाखल आहे. सदर गुन्हातील आय.ए. नंबर २०११/२०२४ अन्वये दि. २३/०९/२०२४ रोजी उच्च न्यायलय, मुंबई, महाराष्ट्र येथे कोर्ट नंबर- २ मध्ये सदर बाबत सुनावणी होणार आहे. तरी आपण दि. ०७/१०/२०२४ रोजी सकाळी १०/०० वाजता उच्च न्यायलय, मुंबई, महाराष्ट्र येथे हजर रहावे	
	कळ्यावे  (आर.ए.भास्कर) पोलीस उपनिरीक्षक भोसरी पोलीस स्टेशन, पि.चि.

6. Mr. R. A. Bhaskar, Police Sub-Inspector has put following note on the said letter dated 1st October 2024.

सहस्ये समजपत्र हे दाखल गुन्हातील आरोपीस दि. ०१/१०/२४ रोजी सकाळी १०/०० वा उच्च न्यायलय, मुंबई येथे हजर राहिल्याची त्यांचे व्हॉट्सअॅप मोबाईल नंबरवर पाठविले आहे. तसेच त्यांचे मोबाईल नंबरवर कॉल करून कळविले आहे.

7. Thus, it is clear that although this Court has issued bailable warrant in the sum of Rs.10,000/- by Order dated 23rd September 2024 the above letter has been sent on WhatsApp number of the Respondent No.2. Thus, prima facie, the Order dated 23rd September 2024 has been violated and in fact the Police Authorities have acted in such a manner that will help the Respondent No.2 – Accused.

8. Mr. Nakhwa, learned APP today submitted a Report dated 16th October 2024 of the Assistant Commissioner of Police, Pimpri Chinchwad. The statement of Vaishali Santosh Pawar (i.e. the wife of the Respondent No.2) dated 14th October 2024 has been annexed to the said Report. It is stated in said statement by the wife of the Respondent No.2 that for last about 10 years the Respondent No.2 has visited the residence very rarely. The statement of Mr. Mangesh Jaysingh Pawar (i.e. brother of the Respondent No.2), is also annexed to the said Report and he has stated therein that said Santosh Jaysingh Pawar is residing with his wife Vaishali and children at Swadeshi Apartment, Flat No.1105, Near D Mart, Moshi, Pune and said Vaishali has informed him that for last 15 days the Respondent No.2 is not available at his house. Thus, it is clear that to help the Respondent No.2 Police Authorities are recording various statements and the Assistant Commissioner of Police, Pimpri Chinchwad has not even bothered to apply his mind.

9. Ms. Saba Shaikh, learned Counsel appearing for the Applicant submitted that when the Order dated 19th March 2024 granting bail to the Respondent No.2 has been passed by this Court, wife of the Respondent No.2 was personally present in the Court.

10. Thus, this is a case where prima facie I am satisfied that the Police Authorities are acting in the manner to protect the Respondent No.2.

11. Accordingly, the Commissioner of Police, Pimpri Chinchwad, is directed to appear through Video Conferencing (V.C.).

12. Stand over to 17th October 2024 at 2:30 p.m..”

(Emphasis added)

5. On 17th October 2024, Mr. Vinoy Kumar Choubey, Commissioner of Police, Pimpri Chinchwad, was present through Video Conferencing (V.C.) and he assured the Court that effective steps would be taken to comply with said Orders, and requested the Court that the matter be placed on 21st October 2024 at 2:30 p.m..

6. Pursuant to the Orders dated 16th October 2024 and 17th October 2024, Mr. Vinoy Kumar Choubey, Commissioner of Police, Pimpri Chinchwad, is appearing through Video Conferencing.

7. Mr. Nakhwa, learned APP for the Respondent No.1 – State, states that bailable warrant issued against Respondent No.2 has been served, and the Respondent No.2 is personally present in Court. He tenders a Report dated 21st October 2024 regarding compliance of said Orders dated 23rd September 2024, 16th October 2024 and 17th October 2024 passed by this Court.

8. Mr. Vinoy Kumar Choubey, Commissioner of Police, Pimpri Chinchwad, states that action is already initiated against the Police Officials responsible for non compliance of said Orders passed by this Court.

9. Ms. Saba Shaikh, learned Counsel for the Applicant states that this Court has granted bail to the Respondent No.2 by Order 19th March 2024 and the matter before the learned Trial Court was listed on 21st March 2024. She submits that on that date, Advocate of the

Respondent No.2 i.e. Accused attended the Trial Court and informed the Trial Court about the Order granting bail. She submits that thereafter, the matter has appeared before the Trial Court for framing of the charge on 26th March 2024, 26th April 2024, 26th June 2024, 26th July 2024 and 10th September 2024 and on all these date, the Respondent No.2 – Accused as well as his Advocate remained absent. Thus, it is clear that Respondent No.2 has misused the liberty granted to him and breached the conditions of bail.

10. Ms. Saba Shaikh, learned Counsel for the Applicant states that the Respondent No.2 is threatening the Applicant of dire consequences.

11. The Supreme Court in the decision of *Javed Gulam Nabi Shaikh v. State of Maharashtra*¹ observed that the object of bail is to secure the attendance of the accused at the trial and that the proper test to be applied for grant or refusal of bail is whether it is probable that the party will appear to take his trial. This is a case where the Applicant is not attending the Trial Court and warrants were required to be issued by this Court to secure the presence of the Respondent No.2.

12. Although, Respondent No.2 has been informed about the pendency of this Bail Application and about the date of this Interim Application as noted in Order dated dated 23rd September 2024, the Respondent No.2 failed to remain present in this Court. The detailed Order dated 16th October 2024 clearly shows that Respondent No.2 has

¹ 2024 SCC OnLine SC 1693

made every attempt of avoiding appearance in this Court in this Interim Application seeking cancellation of bail.

13. The position on record clearly shows that the Respondent No.2 - Santosh Jaysingh Pawar has misused the liberty granted to him.

14. The factual position on record shows that the Applicant is very influential. As the Respondent No.2 has threatened the Applicant, he has violated the conditions of bail. There is substance in the contention raised by Ms. Saba Shaikh, learned Counsel for the Applicant that the Applicant will tamper with the evidence and threaten the witnesses. She points out the *Roznama* of the Spl. Case (MPID) No.983 of 2023 as noted herein above, and states that after the Applicant has been released on bail he has never attended the trial. Thus, it is clear that the Applicant has violated the condition imposed while granting bail.

15. As noted herein above, the main criteria which has required to be taken into consideration by this Court while granting bail is that the Accused will make himself available, for conducting the trial. The Respondent No.2 has violated the said bail condition.

16. Thus, it is clear that the case is made out for cancellation of bail. Accordingly, bail granted to the Applicant by Order dated 19th March 2024 in Bail Application No.286 of 2024 is cancelled.

17. The Interim Application is allowed accordingly.

[MADHAV J. JAMDAR, J.]