



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.577 OF 2024

IN

CRIMINAL APPLICATION NO.79 OF 2023

(XYZ Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.M. Daga, Advocate for the applicant.
Mr. M.J. Khan, APP for the State.
Mr. P.K. Sathianathan, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- APRIL 3, 2024.

By this application, non-applicant No.2 prays for keeping the order passed on 03/04/2024 in abeyance for a period of four weeks.

2. As per the contention of non-applicant No.2 this Court has allowed the application for cancellation of bail and non-applicant No.2 wishes to approach the Hon'ble Apex Court against the said order in the present case as the non-applicant has strong case on merits. It is submitted that the time would be required to approach the Hon'ble Apex Court, and therefore, the order passed by this Court on 03/04/2024 be kept in abeyance.

3. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the said application.

4. Learned Additional Public Prosecutor placed reliance on the *Nathu Singh Vs. State of Uttar Pradesh and ors. [(2021) 6 SCC 64]* and submitted that such order cannot be passed once bail is cancelled.

5. I have heard learned Counsel for both the parties. Perused the decision relied upon by the learned APP wherein in paragraph No. 24 the Hon'ble Apex Court has held that the Court must take into account the statutory scheme under Section 438, Cr.PC., particularly, the proviso to Section 438(1), Cr.PC., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one. It is further observed by the Hon'ble Apex Court that the impugned orders therefore do not withstand legal scrutiny. The resultant effect of the High Court's orders is that neither are the respondents found entitled to prearrest bail, nor can they be arrested for a long duration. During the said duration they can roam freely without being apprehensive of coercive action.

6. In view of the observation made by the Hon'ble Apex Court in the present case also the bail is cancelled on the ground that the learned trial Court has ignored the material evidence which is collected during the investigation and liberty is already granted to the

non-applicant No.2 to approach before the trial Court and the trial Court shall decide the application on merits.

7. Therefore, the present application is without any merits and deserves to be rejected.

8. Hence, the application rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*