



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 87 OF 2024

Abdul Shakil Abdul Aziz Vs State of Maharashtra and another.

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

Court's or Judge's Order

Mr. M.D. Naveed Opai, counsel for applicant
Mr. Nitin Autkar, APP for respondent/State.
Mr. A.S. Deshpande, counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 14/10/2024.

1. By this application, the applicant is seeking cancellation of bail, which is granted to the present applicant by the Sessions Court in connection with crime No. 493/2024 registered under Sections 3 and 25 of the Arms Act by order dated 15/05/2024.

2. The crime is registered on the basis of a report lodged by Abdul Shakil Abdul Ajij, on an allegation that there was a previous dispute between him and his brother-in-law Abdul Haider, and he was abused and threatened his brother-in-law. On 09/05/2024, at about 7 to 7.30, when he was sleeping in his room, at that time, the employee of his hotel informed him that his brother-in-law was seen by him and keeping something underneath the seat in the vehicle, and on inspection of the vehicle, it revealed that his brother-in-law has kept a country-made pistol and cartridge in his

vehicle. On the basis of the said report, police have registered the crime against the present applicant.

3. After registration of the crime, the applicant has filed an application for grant of anticipatory bail. The learned trial court has considered the said application and held that, on perusal of the case diary, the custodial interrogation of the applicant is not required and released him on bail.

4. Being aggrieved and dissatisfied with the same, the present application is preferred for cancellation of bail on the ground that the learned trial court has not considered that there is CCTV footage to show the involvement of the present applicant in the alleged offence, and the investigating officer has also not carried out the investigation in a proper manner by seizing the said CCTV footage. The learned trial court has not considered that the involvement of the present applicant is in a serious offence while releasing him on anticipatory bail. In view of that, the application deserves to be allowed, and bail granted to the applicant deserves to be cancelled.

5. The said application is strongly opposed by the non-applicant No. 2 on the ground that the learned trial court has rightly considered that the custodial interrogation of the present applicant is not required. Moreover, it was also considered that the offences alleged are punishable with imprisonment less than seven years, and in the light of the

Arnesh Kumar V State Of Bihar & Anr [AIR 2014 SC 2756], the compliance by issuing the notice under Section 41 is to be there. The said compliance was not there; that was also considered by the Court, and appreciating the fact that the weapon is already recovered and no custodial interrogation is required, and released him on bail; therefore, the application is devoid of merits and liable to be rejected.

6. Learned APP also supported the case of the applicant, as far as the cancellation of bail is concerned.

7. After hearing learned counsel of the applicant, learned APP for State, and counsel for non-applicant No. 2, perused the entire investigation papers. As per the allegation, the brother-in-law, i.e. applicant, has kept the weapon, i.e. country-made pistol, and the cartridge in the vehicle of the informant behind his back, and therefore, he lodged the report at the police station. The ground raised by learned counsel for applicant is that CCTV footage is not collected by the investigating agency, and the evidence of CCTV footage clearly shows the involvement of the present applicant, i.e. not considered by the Sessions Court while releasing him on anticipatory bail.

8. As far as the non-collection of the material evidence is concerned, the applicant has other remedies available, as far as the directions regarding the proper investigation is concerned. On perusal of the impugned order, it reveals that the Sessions Court has considered that the allegation against

the present applicant is that he has kept the weapon in the vehicle, and after registration of the offence, the notice under Section 41A was issued to the applicant. The issuance of the notice under Section 41A itself is sufficient to show that the custodial interrogation of the present applicant, i.e., non-applicant in the present case, was not required.

Section 41A, which reads as follows: The police officer, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

9. Thus, the issuance of notice by the investigating agency itself is sufficient to show that the custodial interrogation of the present applicant was not required, and therefore, said notice was issued. The Sessions Court has also considered the aspect of the custodial interrogation and also considered that the offence alleged are punishable with imprisonment less than seven years and released the applicant therein on bail.

10. As far as the considerations for grant of bail and cancellation of bail are different. While cancelling the bail granted to the appellant, the decision of the Hon'ble Apex

Court in the case of *Abdul Basit alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another*, [(2014) 10 SCC 754], requires to be taken into consideration. As well as in *Gurcharan Singh & Ors. Vs State (Delhi Administration)* [AIR 1978 SC 179], wherein also, the provision regarding cancellation of bail has been culled out and it is held that Section 439 of the new Code confers special powers on High Court ,or Court of Session regarding bail. This was also the position under Sec. 498 Cr. P.C. of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly, under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who been admitted to bail under subsection (1) to be arrested and may commit him to custody. In other Words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new

Code to High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail.

11. As far as considerations for cancellation of bail are concerned, it is well settled that it can be cancelled under the following circumstances: (a) The accused has misused the liberty granted to him; (b) he floated the conditions of the bail order; (c) the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail. (d) The bail was procured by misrepresentation of fraud. It is also well settled that while canceling the bail, the overwhelming or supervening circumstances are required. The general/casual allegations are not sufficient to cancel the bail.

12. As far as the present application is concerned, it reveals that the applicant was released on bail by imposing certain conditions. The diary produced on record shows that after releasing him on bail, he has attended the police station and cooperated with the investigating agency. Thus, neither overwhelming or supervening circumstances are brought on record to cancel the bail, nor there is any misused of liberty granted to him. The Sessions Court has

considered the aspect that custodial interrogation is not required and the offence punishable is less than seven years.

13. Thus, considering all these aspects, the application is devoid of any merits and liable to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]