Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1623 OF 2025

ARJUN VITTHAL KUDHEKAR
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Date: 2025.12.24 22:31:40 +0530

The State of Maharashtra …Applicant

Versus

Amol Dattatray Lakhe …Respondent

AND
ANTICIPATORY BAIL APPLICATION NO.3347 OF 2025
WITH
INTERIM APPLICATION NO.4721 OF 2025
IN
ANTICIPATORY BAIL APPLICATION NO.3347 OF 2025

Amol Dattatray Lakhe …Applicant

Versus

The State of Maharashtra …Respondent

Ms. Madhavi Ayyappan a/w Yogesh Morey i/b Talekar & Associates, for the Applicant in ABA/3347/2025 and for the Respondent in APL/1623/2025.

Mr. Shrikant V. Gavand, APP a/w Mr. Sameer M. Mangaonkar, APP, for the Applicant-State of Maharashtra in APL/1623/2025.

Mr. Shrikant V. Gavand, APP a/w Mr. Sameer M. Mangaonkar, APP, for the Respondent-State in ABA/3347/2025 & IA/4721/2025.

A.C.P. Sujata G. Tanawade, Sinhagad Road Division, Pune City, present.

CORAM: MADHAV J. JAMDAR, J.
DATED: 24 DECEMBER 2025

P.C.:

1. The Criminal Application No.1623 of 2025 has been filed by the State of Maharashtra seeking cancellation of the anticipatory bail granted to the Respondent by Order dated 4th December 2025 passed by this Court in Anticipatory Bail Application No.3347 of 2025.

2. Mr. Gavand, learned APP for the Applicant-State of Maharashtra submits that in fact provisions of the *Maharashtra Control of Organised Crime Act, 1999* ("**MCOC Act**") have been invoked in the said crime and the same has not been pointed out to this Court. Learned APP points out the decision of the Supreme Court in the case of ***Vikram Bakshi v. R.P. Khosla*** [1] and more particularly Paragraph Nos.34 and 34A of the same, which read as under:

> "***34.*** *A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that* ***the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar****. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section "362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu.*
>
> ***34A. Having said that, the following exceptional circumstances may be identified, wherein a criminal court is empowered to alter or review its own judgment or a final order under Section 362 CrPC****:*
>
> *a. Such power is expressly conferred upon court by CrPC or any other law for the time being in force or;*

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*b. **The court passing such a judgment or order lacked inherent jurisdiction to do so or**;*

*c. **A fraud or collusion is being played on court to obtain such judgment or order or**;*

d. A mistake on the part of court caused prejudice to a party or;

e. Fact relating to non-serving of necessary party or death leading to estate being non-represented, not brought to notice of court while passing such judgment or order.

It needs to be reiterated that all these exceptions are only exercisable for seeking a recall or review of an order or judgment, if a ground that is raised was not available or existent at the time of original proceedings before the Court. Mere fact that the said ground, although available, was not raised or pressed during the concerned proceedings, does not provide for an exemption to the parties to assert it as a ground. Moreover, the said power cannot be invoked as a means to circumvent the finality of the judicial process or mistakes and/or errors in the decision which are attributable to a conscious omission by the parties."

3. Thus, what the Supreme Court has held that in exceptional circumstances wherein a criminal court is empowered to alter or review its own judgment or a final order under Section 362 of the *Code of Criminal Procedure, 1973* ("**CrPC**") particularly when the court passing such a judgment or order lacked inherent jurisdiction, or a fraud or collusion is being played on court to obtain such judgment or order.

4. Admittedly, the provisions of the MCOC Act have been invoked as far as the subject crime and the same has not been pointed out to this Court.

5. It is required to be noted that in view of the mandate of Section 21(3) of the MCOC Act, an application filed under Section 438 of CrPC or Section 482 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* ("**BNSS**") is not maintainable.

6. In view of this position, as it has not been pointed out that the provisions of the MCOC Act have been invoked and as there is a clear bar for entertaining the application under Section 438 of CrPC or Section 482 of BNSS and in view of the law laid down by the Supreme Court in ***Vikram Bakshi*** (supra), the Order dated 4th December 2025 passed by this Court in Anticipatory Bail Application, is recalled and set aside.

7. The Criminal Application No.1623 of 2025 is disposed of in above terms.

8. At this stage, Ms. Madhavi Ayyappan, learned Counsel appearing for the Applicant in Anticipatory Bail Application No.3347 of 2025, seeks withdrawal of the Anticipatory Bail Application. Accordingly, the Anticipatory Bail Application No.3347 of 2025 is allowed to be withdrawn and dismissed as such.

9. In view of this Order, nothing survives in the Interim Application No.4721 of 2025 and the same is also disposed of.

[MADHAV J. JAMDAR, J.]