

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 363 OF 2024**

Divyesh C. Sejpal ..Applicant
Versus

The State of Maharashtra & Anr ...Respondents

Mr. Rizwan Merchant, with Faisal F.Shaikh & Shailendra Agharkar,
for the Applicant

Mr. P. P. Devkar, APP, for the Respondent-State.

Ms. Kausalya Patil, i/b Pushpa Ganediwala, Ansha Agrawal & Vaishali
Rajkarne, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 17th FEBRUARY 2025

P.C.:

1. The Applicant-first informant has preferred this Application seeking cancellation of the bail granted to Respondent No.2-accused by an Order dated 16th January 2024 in CR No. 561 of 2022 registered with Kalachowki Police Station for the offences punishable under Sections 120-B, 406, 409, 420, 448, 465, 467, 471, 474 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3, 4 and 13 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA").

2. The Applicant asserts that the Respondent obtained bail by resorting to *Suppressio Veri and Suggestio falsi*.

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3. Respondent No.2 has resisted the Application. An Affidavit in Reply has been filed on behalf of Respondent No.2 and the contentions in the Application are controverted.

4. I have heard Mr. Rizwan Merchant, learned Counsel for the Applicant, Mr. Devkar, learned APP for the State and Ms. Kausalya Patil, learned Counsel for Respondent No.2-accused, at some length..

5. At the outset, it is necessary to note that in CR No. 561 of 2022 the indictment against the accused was that the accused had induced the first informant to enter into transaction by making false representation that Flat No. 1503 and 2103 at Neha Residency, Abhudaya Nagar, Parel, Mumbai, which were then being allegedly developed by the accused, would be sold to the first informant-Applicant herein. Despite the receipt of entire consideration of Rs. 5 crores in respect of Flat No. 2103, the accused did not deliver possession thereof and instead delivered the said flat to Raman Jaybhav (A2) and thereby deceived the first informant. Likewise, the accused dishonestly induced the first informant to enter into a transaction to purchase Flat no. 2102 at Neha Galaxy and part with an amount of Rs.1,09,00,000/-. Subsequently, the accused failed to complete the sale and, yet, retained the said amount. To defraud the first informant, the accused allegedly prepared a false and fabricated Memorandum of Understanding.

6. By an Order dated 16th January 2024, the accused was enlarged on bail. In the said order, the Court had noted that, to show his *bona fide*, the accused has filed an Affidavit cum Undertaking to hand over the possession of Flat No. 2103 to the first informant subject to the first informant depositing GST and other dues.

7. Since a submission regarding non-compliance of the said undertaking, was assiduously canvassed on behalf of the Applicant, it may be expedient to note the reasons which weighed with this Court to enlarge the accused on bail.

“7. Learned APP resisted the application for bail. Mr. Merchant, learned Counsel for the first informant, submitted that the first informant is willing to accept possession of Flat No.2103 proposed to be delivered by the applicant with a view to give a quietus to the dispute. However, the applicant is unjustifiably holding a sum of Rs.1,09,00,000/- and the amount of GST and other charges, which the first informant is required to pay, deserve to be adjusted against the said outstanding amount owed by the applicant to the first informant. Therefore, subject to the said condition, the applicant may be released on bail.

8. Prima facie, the genesis of the alleged offences appears to be in commercial transaction between the first informant and the applicant. Incontrovertibly, possession of Flat No.1503 has been delivered post execution of the instrument. The applicant undertakes to deliver possession of Flat No.2103 as well. Prima facie, the allegations of making

forged document and forgery appear to be a matter for adjudication at the trial.

9. The applicant is in custody since 25 November 2022. Investigation is complete for all intent and purpose. Further detention of the applicant does not seem to be warranted. The applicant appears to have roots in society. Possibility of fleeing away from justice seems to be remote. Since the applicant has also undertaken to deliver possession of Flat No.2103 and complete the transaction, undertaking contained in the affidavit can be accepted as an undertaking to the court.

10. A further statement was made by Mr. Mundargi that, as per his instructions, after release the applicant would have a meeting with the first informant to resolve the issue of appropriation of the amount of Rs.1,09,00,000 towards GST and other amount payable by the first informant in respect of Flat No.2103.

11. The said statement is accepted. However, it must be clarified that the Court may not be construed to have imposed any condition on the applicant for release on bail.”

8. Mr. Merchant, the learned Counsel for the Applicant, submitted that the accused had obtained the order of bail by filing an undertaking before the Court and making the Court believe the statement made in the said undertaking. The Applicant had not complied with any of the undertakings, which have been explicitly extracted by this Court in the Order dated 16th January 2024. Therefore, the said Order which has been obtained by practicing fraud on the Court deserves to be cancelled.

9. At the out set, it must be noted that being mindful of the clear position in law that the Court cannot put a condition of either making deposit or otherwise performing any other contractual obligation as a condition for bail, in paragraph 11 of the said Order (extracted above), this Court had made it abundantly clear that this Court cannot be construed to have imposed any condition on the accused for release of bail.

10. I am, therefore, unable to persuade myself to agree with the submission of Mr. Merchant that this Court was persuaded to enlarge the accused on bail due to the said undertaking. On the contrary, this Court had noted that the accused had been in custody since 25th November 2022; the investigation was complete for all intent and purposes; further detention of the accused was not warranted; the accused appeared to have roots in society and the possibility of fleeing away from justice seemed to be remote. Undoubtedly, the Court also noted that the accused had undertaken to deliver possession of Flat No. 2103 and complete the transaction. However, it cannot be said that the said undertaking weighed with this Court in releasing the accused on bail. At best, it was one of the factors taken into account.

11. Mr. Merchant, the learned Counsel for the Applicant, then urged that the accused had obtained bail by suppressing material information with regard to the FIR No. 367 of 2023 which was registered against the

accused at Dadar Police Station for the offences punishable under Section 420 and 406 of the Penal Code.

12. It was submitted that the registration of the said FIR indicates that there was a much deeper conspiracy and the matter was not restricted to the defrauding of the first informant alone. The accused was duty bound to disclose all the material facts. Non disclosure of FIR No.. 367 of 2023, in the circumstances of the case, constitutes a fraud on the Court. A party who practices fraud on the Court does not deserve any relief. To buttress this submission Mr. Merchant placed reliance on the decisions in the case of **Moti Lal Songara Vs Prem Prakash Alias Pappu And Anr¹** and **Union of India & Ors Vs Ramesh Gandhi.²**

13. It is trite that the grant of bail, in a non-bailable case, at the initial stage, and the cancellation of bail so granted, stand on a different footing. Very strong, cogent and overwhelming circumstances are necessary to justify cancellation of bail. Breach of the conditions of the bail, interference or attempt to interfere with due course of administration of justice, abuse of the liberty secured by an order of bail are few of the illustrative cases which may justify the cancellation of bail. Yet, bail once granted cannot be cancelled in a light manner (**Dolat Ram Vs State of Haryana.**)³

1 (2013) 9 SCC199.

2 (2012) 1 SCC 476.

3 1995 1 SCC 349.

14. In the case at hand, the thrust of the submission of Mr. Merchant was that the accused had obtained bail by suppressing material facts, especially regarding FIR No. 367 of 2023. I am afraid the said contention can be urged as a supervening event, which justifies the cancellation of bail. Essentially, the said contention touches upon the merits of the order granting bail. In such a situation the proper remedy is to seek the cancellation of bail by approaching a superior court.

15. At any rate, the accused was in custody for about 14 months in connection with the offences which are exclusively triable by the Magistrate. The accused was enlarged on bail after the investigation was completed and charge-sheet was filed. The question as to whether the accused had not complied with the undertakings is rooted in facts and, thus, a contentious issue. Whether the facts in relation to FIR No. 367 of 2023 (if disclosed) would have dissuaded the Court from enlarging the accused on bail, is debatable.

16. Thus, the Application for cancellation of bail does not merit countenance.

17. Hence, the following order:

O R D E R

Application stands rejected.

[N. J. JAMADAR, J.]