

Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5433 OF 2024

IN

CRIMINAL APPLICATION NO. 506 OF 2019

IN

CRIMINAL APPEAL NO. 467 OF 2019

The State of Maharashtra

...Applicant/Appellant
(Orig. Complainant)

~ versus ~

Madurai alias Madra Devendra Mariappan,
Age: 44 years, Occ. Cable Operator,
R/o 84 Society, Room No. B-7, Near
Janakidevi School, MHADA Colony,
Four Bunglow, Varsova, Mumbai

...Respondent
(Orig. Accused No. 1)

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APPEARANCES

For the Applicant-State

Ms Geeta P Mulekar, APP.

For the Respondent

Mr Sudeep Pasbola, Senior Advocate,
*with Ayush Pasbola & Pranav
Gole, i/b Rahul Arote.*

Present in Court

**Mr Shekhar Ashok Pawar, PSI, Juhu
Police Station.**

CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ

RESERVED ON : 23RD JULY 2025.
PRONOUNCED ON : 31ST JULY 2025.

ORDER (Per Suman Shyam, J):-

1. This Criminal Application is filed by the State of Maharashtra under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 (“BNSS”) seeking cancellation of the bail granted to the Respondent/Original Accused No. 1, Madurai @ Madra Devendra Mariappan in Criminal Application No. 506 of 2019 arising out of Criminal Appeal No. 467 of 2019 on the ground that the Respondent has violated the bail conditions. The facts of the case, in a nutshell, are that the sole Respondent/Original Accused No. 1, along with three other co-accused, was prosecuted for committing the murder of one Mari Raman Devendra. On conclusion of trial the Respondent was convicted under section 302 of IPC by the judgement and order dated 18th February 2019 passed by Additional learned Sessions Judge in Sessions Case No. 835 of 2014 arising out of C.R. No.285/2014 registered with Juhu Police Station, for committing offence punishable under Section 302 of the IPC. Assailing the Judgment and Order dated 18th

February 2019, the Respondent has preferred Criminal Appeal No 467 of 2019 which is pending disposal. On an interlocutory application being Criminal Application No. 506 of 2019 filed by the Respondent seeking bail, a Division Bench of this Court (Coram: Shri BP Dharmadhikari & Smt Swapna S Joshi, JJ) had passed order dated 7th August 2019 suspending the jail sentence of the Respondent thus directing his release on bail. The conditions of bail, as laid down in the order dated 7th August 2019, are produced here-in-below for ready reference:

- (a) *The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount;*
- (b) *He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers;*
- (c) *Similar details in relation to his sureties shall also be furnished;*
- (d) *He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter;*
- (e) *He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing;*

- (f) *He shall report to the Superintendent/Registrar of Sessions Court, Mumbai on first working Monday in every two months as a condition of his release;*
- (g) *His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith;*
- (h) *Application is accordingly allowed and disposed of.*

2. According to the State, the Respondent has violated the bail conditions by threatening one Dinesh Kannaswami Devendra as a result of which offence bearing C.R.No.120/2024 has been registered against him in Juhu Police Station under sections 324,504,506(2), 34 of the Indian Penal Code (IPC). According to the State, after his release on bail *vide* order dated 7th August, 2019, as many as three offences have been registered against the respondent. It has, therefore, been contended that the respondent is a habitual offender who has acted in violation of the bail conditions set out by this court. He has no respect for law. As such, if the respondent is allowed to remain on bail, there is every likelihood that he may again threaten witnesses and tamper with the evidence. Therefore, his bail is liable to be cancelled. In order to substantiate the above plea, the Applicant-State has invited the attention of this court to the said three offences registered against

the Respondent arising out of incidents which took place subsequent to the issuance of the order dated 7th August 2019.

3. The Respondent has filed Counter Affidavit resisting the prayer made in the Application *inter alia* contending that he has not violated the bail conditions. However, with a view to deprive him of his personal liberty, false and frivolous complaints have been lodged against the respondent. It is also the contention of the Respondent that the complaints referred to by the State are the outcome of business and political rivalry between the Respondent and the complainants.

4. The learned APP, Mrs Geeta P Mulekar has strenuously argued that notwithstanding the clear and un-ambiguous conditions laid down in the order dated 7th August 2019 passed by this Court, the Respondent has not only indulged in antisocial activities but he has also tried to intimidate the brother of the deceased viz Dinesh Kannaswami thus, making an attempt to interfere with the complainant and witnesses connected with the pending Criminal Appeal. It is also the submission of the learned APP that the Respondent, by his irresponsible conduct, has violated condition Nos (a) and (d) of the order dated 7th August, 2019. The

respondent constitutes a serious threat to the society and, therefore, his bail deserves to be cancelled.

5. Mr Pasbola, learned Senior Counsel for the Respondent has opposed the submissions made by the learned APP and submits that there is a deliberate attempt to frame his client by registering false FIRs. Mr Pasbola has further argued that in the incidents referred to in the application, the Respondent is actually the victim. However, when he approached the Juhu police, the police refused to register his complaint. That apart, submits Mr Pasbola, even the complaint made by his sister-in-law of stalking by one of the complainants has been declined by the police for no valid reason.

6. We have considered the submissions made at the bar and have also perused the statements made in the application. It is no doubt correct that after the Respondent was enlarged on bail by the order dated 7th August 2019, he has apparently been involved in as many as three separate incidents wherein, offences have been registered against him. On 6th June 2023, an FIR was registered with the Juhu Police Station as C.R. No. 363/2023 under Sections 325, 323, 506, 34 of IPC read with Section 142 of the Maharashtra

Police Act, 1951. The basic complaint brought against the Respondent in that FIR is to the effect that the complainant in that case was assaulted by some persons on being instigated by the Respondent.

7. On 30th January 2024, another FIR was registered as C.R. No. 120 of 2024 under Sections 324,, 504, 506(2), 34 of the IPC. In the said FIR, it has been alleged that the Respondent had brutally assaulted the complainant. The stand of the Respondent, however, is that in the said incident, he was also assaulted but when a complaint was made by him before the police, the police did not register the same. The Respondent has further claimed that he had to undergo medical treatment at Cooper Hospital for the injuries sustained by him due to the aforesaid incident.

8. On 15th October 2024, another FIR was registered bearing C.R.No. 960/2024 under Sections 109, 353, 3(5) of the BNSS and Section 37(1), 135 of the Maharashtra Police Act, 1951 wherein, it was alleged that on that day, at about 1:30 hours, near Cooper Hospital, on Indravadan Oza Road, the Respondent and one Murgan Krushna Devendra alias Siya infurtherance of common intention, had threatened to kill the first informant, Mr Rajan

Devendra and then assaulted him with hand. Then they showed a cement block to the public gathered there and threatened to assault them, if they came forward to help. Murgan Krushna Devendra alias Siya had hit the cement block on the head of the first informant with intent to kill him. It was alleged that the aforesaid act was the result of anger developed by the two accused on account of the earlier complaint filed by the said first informant against one Alex Selvan Devendra.

9. It will be significant to note herein that as per the statements made in the application, investigation in connection with C.R. NO. 363 of 2023 has, in the meantime, been completed and the Chargesheet bearing No. CC/1242/PW/2024 has been submitted. However, in so far as C.R. No. 120/2024 and C.R. No. 960/2024 are concerned, the matter is still under investigation by the police. It is in the backdrop of these factual matrix that this Court is called upon to consider as to whether the Respondent has indulged in activities, which amounts violation of conditions of the bail as laid down in the order dated 7th August 2019, justifying cancellation of the bail.

10. At the very outset, it will pertinent to note herein that it is the undisputed position of fact that after the Respondent was released on bail *vide* order dated 7th August 2019, for a period of about four years, there was admittedly no incident involving the respondent which can even remotely be stated to be activities amounting to violation of conditions of bail. The first incident, as noted above, took place only on 6th June 2023 leading to registration of C.R. No 363/2023 in Juhu Police Station.

11. Law relating to cancellation of bail is firmly settled by a catena of judicial pronouncements of the Hon'ble Supreme Court. It is settled law that for cancellation of bail very strong and cogent reasons must exist. In the case of ***Bhagirath Singh Judeja vs State of Gujarat***,¹ the Hon'ble Supreme Court has observed that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of bail and the trend today is towards granting bail.

12. In case of ***Mahboob Dawood Shaikh vs State of Maharashtra***,² the Hon'ble Supreme Court has held that the

1 (1984) 1 SCC 284.

2 2004 (2) SCC 362.

considerations for grant of bail and cancellation of bail stand on different footing. In that case it has been held that bail *can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc.* These grounds were, however, held to be illustrative and not exhaustive.

13. In ***Vipin Kumar Dhir V State of Punjab and Anr***,³ it was held that for cancellation of bail, it is necessary that “cogent and overwhelming “ reasons are present. However, there could be supervening circumstances which may develop post the grant of bail which are non-conducive to fair trial making it necessary to cancel the bail.

3 (2021) 15 SCC 518.

14. In a recent decision of the Apex Court in the case of *Himanshu Sharma v State of Madhya Pradesh*,⁴ the principles for cancellation of bail have been restated. The observations made in paragraphs 10 and 11 would be relevant for this case and, therefore, are being reproduced here-in-below:

“10. While cancelling the bail granted to the appellants, the learned Single Judge referred to this Court’s judgment in the case of Abdul Basit (supra). However, we are compelled to note that the ratio of the above judgment favours the case of the appellants. That apart, the judgment deals with the powers of the High Court to review its own order within the limited scope of Section 362 CrPC. Relevant observations from the above judgment are reproduced below:-

“14. Under Chapter XXXIII, Section 439(1) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section 439(2) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody i.e., the power to cancel the bail granted to an accused person. Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. Where bail has been granted under the proviso to Section 167(2) for the default of the prosecution in not completing the

4 (2024) 4 SCC 222.

investigation in sixty days after the defect is cured by the filing of a charge-sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last-mentioned case, one would expect very strong grounds indeed. (Raghubir Singh v. State of Bihar)[(1986) 4 SCC 481].

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (UT of.) [(1978) 1 SCC 118].

16. In Gurcharan Singh case [(1978) 1 SCC 118] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short “the old Code”) and elucidated the position of law vis-a-vis powers of the courts granting and cancelling the bail. This Court observed as under:

“16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding bail. This was also the position under Section 498 CrPC 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 has 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 a 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 by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”

17. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas* [(2001) 6 SCC 338]. In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Narendra K. Amin v. State of Gujarat* [(2008) 13 SCC 584] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it

was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran* case [(2001) 6 SCC 338] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

18. Reverberating the aforesaid principle, this Court in the recent decision in *Ranjit Singh v. State of M.P.* [(2013) 16 SCC 797] has observed that:

“19. ... There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.”

19. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to

be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.”

11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

(a) the accused has misused the liberty granted to him;

(b) flouted the conditions of bail order;

(c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;

(d) or that the bail was procured by misrepresentation or fraud. In the present case, none of these situations existed.”

15. What is crystal clear from the abovementioned decisions of the Supreme Court, misuse of personal liberty and / or violation of

the conditions of bail could be a valid ground to cancel the bail. However, whether there has in fact been such violation would depend on the facts and circumstances of each case. In the present case, it is no doubt correct that the accused got involved in three incidents noted here-in-before, whereby, offences have been registered against him. However, from a mere reading of the FIR it is not possible for this court to ascertain the circumstances under which the incidents had actually occurred. Charge is yet to be framed against the respondent in any of those cases. Therefore, the allegations brought against the respondent are completely unsubstantiated as on date.

16. From the submissions made at the bar, it is apparent that the three incidents involved in the C.R. No. 363/2023, C.R.No. 120/2024 and C.R. No. 960/2024 are not the outcome of any premeditation on the part of the Respondent but *prima facie* they appear to be incidents triggered by some happenings on the spot whereby in one such incident involved in C.R. No. 363/2023, the brother of the deceased was also present. However, that by itself cannot lead to be inference that it was a deliberate attempt on the part of the Respondent to interfere with the complainant/witnesses

connected to the present proceeding. After going through the contents of the respective FIRs, we are of the considered opinion that the possibility of the incidents being triggered, either wholly or partially by some other person(s) cannot be completely ruled out at this stage. Therefore, the respondent getting involved in any one or all the three incidents merely by chance cannot also be totally ruled out.

17. It must be borne in mind that every criminal case has its own peculiar scenario and projection. The truth can only be established in a full length trial. However, for the purpose of an application for cancellation of bail, the court is only required to form a *prima facie* opinion as regards the conduct of the respondent. From a careful analysis of the material on record, we are of the view that those are insufficient to hold that there has been any deliberate attempt on the part of the respondent to either directly or indirectly attempt to contact or pressurize either the complainant in this case or any of the witnesses. There is also nothing on record to show that the respondent had indulged in commission of similar nature of offence such as the one involved in Criminal Appeal No 467 of 2019. Moreover, from the statements made in his Counter

Affidavit, it appears that the Respondent has all along remained present before the court below, as and when required, thus adhering to the first condition of bail. There is no allegation of violation of the other bail conditions.

18. In the case in hand, the order dated 7th August 2019 granting bail to the Applicant was passed in an Interim Application arising out of a Criminal Appeal preferred by him which is pending before this Court. Although the Applicant has already been convicted by the Trial Court, yet, taking note of the facts of the case and the evidence available on record, bail was granted to the Applicant by this Court. Ordinarily, after conclusion of trial, the question of tampering with evidence and/or pressurising witnesses would not arise. However, if it transpires from the material on record that by taking advantage of the bail order, the Applicant is making deliberate attempt to influence the outcome of the pending Appeal by threatening the complainant, then such conduct of the Applicant can be a relevant consideration for cancellation of his bail. However, upon review of the material on record, no such direct connection as regards the alleged activity of the Applicant and threat to the complainant and/or witnesses *qua* the pending

Appeal could be detected. Since this Court has already taken note of the past conduct of the Applicant, the evidence on record as well as the circumstances of the case, while granting him bail, the level of scrutiny of the allegations made by the State for cancellation of bail in this application ought to be of higher standard as compared to one made for cancellation of bail during trial. In other words, the parameters applicable for considering of grounds taken in the application for cancellation of bail granted during trial and that during the pendency of a Criminal Appeal before the High Court would, in our view, stand on different footings and, therefore, would have to be dealt accordingly by the Court.

19. The principle “bail as a rule and jail is an exception” is embodied in Article 21 of the Constitution of India. Although such a right of the accused/convict is not absolute, yet, the essence of personal liberty guaranteed under Article 21 would be of paramount consideration. While dealing with an application for cancellation of bail the courts must, therefore, endeavour to strike a balance between the individual liberty and the societal interest and exercise jurisdiction with great care and circumspection, bearing in mind the settled legal principles governing the issue.

Bail once granted ought not to be cancelled in the absence of strong, cogent and overwhelming ground. Having regard to the facts of this case we are of the opinion that strong, cogent and overwhelming grounds are not present in this case justifying cancellation of the bail earlier granted to the respondent by the order dated 7th August, 2019.

20. We also find from the record that the Police had earlier initiated externment proceedings against the respondent. By issuing order dated 16.05.2024, the Deputy Commissioner of Police, Zone IX, Mumbai had directed externment of the respondent from Mumbai City and Mumbai Sub-Urban districts for a period of one year. However, the order dated 16.05.2024 was set aside by this court by the judgement and order dated 4th March 2025 passed in Criminal Writ Petition No. 732 of 2025. It would be noteworthy that while issuing the order dated 4th March, 2025, the learned Single Judge had taken note of all the Criminal Cases instituted against the respondent including the proceedings referred to in the present application.

21. It also transpires from the case record that the Respondent has been granted anticipatory bail in connection with C.R. No. 960

of 2024. However, there is nothing on record to indicate as to whether the State has taken any steps for cancellation of the anticipatory bail granted to the respondent.

22. For the reasons stated hereinabove, this application is held to be devoid of any merit. This application for cancellation of bail, therefore, stands rejected.

23. The State would, however, be at liberty to take appropriate action in the matter, in accordance with law, in the proceedings in connection with C.R. No. 363/2023, C.R.No. 120/2024 and C.R. No. 960/2024.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)