

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.37 OF 2025

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Jatin Sethi

Partner of Naad Films LLP

... Applicant

V/s.

Mahesh Premchand Pandey & Anr.

... Respondents

Mr. Mohsin Ghaniwala for the applicant.

Ms. Rajashree V. Newton, APP for the State.

Mr. Biradar, API, Amboli Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 26, 2025

P.C.:

1. The present application is filed by the applicant seeking cancellation of bail granted to the accused by the learned Sessions Court. The applicant has essentially challenged the legality, propriety and correctness of the order passed by the Sessions Court, by which the accused has been directed to be released on bail. According to the applicant, the order has been passed without considering the gravity of the offence and the material on record, and thus deserves to be interfered with.

2. *When the matter is called out, the learned advocate appearing today on behalf of the applicant submits that he has recently been engaged by the applicant. He states that the earlier*

advocate who was representing the applicant has refused to hand over the NOC for filing Vakalatnama, despite several requests. The applicant is personally present before the Court through Video Conference and has confirmed that he has decided to engage a new advocate in place of his earlier counsel.

3. If the statement made by the applicant is true, and if the earlier advocate is indeed refusing to hand over the *NOC* to the client, then such conduct on the part of the advocate cannot be countenanced. It is well settled in law that the file and case papers belong to the client and not the advocate, and once the advocate has been discharged or the client has decided to change legal representation, the former advocate has no authority to retain the papers. Any such act would amount to professional misconduct.

4. This legal position is no longer *res integra* and has been settled by the Supreme Court in the case of *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 264, where it has been held that an advocate has no lien over the client's papers and is bound to return them once his engagement has ended. The Apex Court has observed that withholding such documents without just cause would amount to professional misconduct, for which appropriate proceedings may be initiated before the Bar Council concerned.

5. In light of the above position of law, this Court deems it necessary to clarify that any advocate who refuses to hand over the *NOC* to his client after being discharged from the matter is liable to be reported to the Bar Council of Maharashtra and Goa, for necessary disciplinary action.

6. In the present case, since the applicant has expressed his intention to change his advocate, and has engaged Mr. Mohsin Ghaniwala, learned advocate, to represent him in this application, permission is granted to Mr. Ghaniwala to appear and act on behalf of the applicant.

7. The Registry is directed to make necessary entries to reflect the change in vakalatnama.

8. At the outset, it is necessary to refer to the scope and ambit of Section 439(2) of the Code of Criminal Procedure, 1973. This provision empowers the High Court or the Court of Sessions to cancel bail granted to an accused person, provided certain conditions are satisfied. The cancellation of bail under this section is ordinarily justified if (i) the accused has misused the liberty granted to him; (ii) has violated the conditions imposed while granting bail; or (iii) there are supervening circumstances which make his continued release on bail prejudicial to the fair trial or the interest of justice.

9. However, in the present case, the grievance of the applicant is not based on any subsequent event or breach of condition by the accused after bail was granted. Rather, the applicant seeks to challenge the correctness of the bail order itself on the ground that the same ought not to have been granted. Such a challenge does not strictly fall within the ambit of Section 439(2) Cr.P.C., which is limited to cancellation of bail on post-bail conduct or changed circumstances.

10. It is well-settled that if the challenge is not to any

supervening event but to the bail order itself as being erroneous or illegal, the proper course is to invoke the revisional or writ jurisdiction of the High Court, where the legality, propriety, or correctness of the order can be examined. In such a situation, the application for cancellation of bail under Section 439(2) Cr.P.C. is not the appropriate remedy. In view of the settled legal position, this Court is of the considered opinion that the present application is not maintainable under Section 439(2) of the Code.

11. Accordingly, the application is rejected as not maintainable. However, it is made clear that the applicant is at liberty to adopt such other remedies as may be available in law, including filing a revision or a writ petition, if so advised.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 27 June 2025. The corrections in paragraph Nos.2, 3 and 5 are shown in italicize.