

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.138 OF 2025

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Bharat Goel ... Applicant
V/s.
Dhrupad Narendra Solanki & Anr. ... Respondents

Mr. Bhart Goel, Applicant-in-person (through V. C.).

Mr. Sarosh Damania a/w Ms. Riddhi Shah, for
respondent No.1.

Mrs. Rajashree V. Newton for State – respondent.

Mr. Nitin Kamble, PSI for Amboli Police Station,
Mumbai.

CORAM : AMIT BORKAR, J.

DATED : JUNE 26, 2025

P.C.:

1. The present application is filed by the applicant for cancellation of bail, essentially challenging the legality and correctness of the order passed by the learned Sessions Court whereby bail has been granted to the accused.

2. 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.

3. 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.

4. 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.

5. 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.)