IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPEAL NO. 549 OF 2026

Santosh Raghunath Dhotre ....Appellant

VERSUS

The State of Maharashtra .....Respondent

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. A. D. Khedkar along with Mr. Y. A. Jadhav, Advocate for the Appellant.
Ms. R. P. Gour, APP for the State.

CORAM : R. M. JOSHI, J.
DATE : 8th OCTOBER, 2026.

PER COURT :

1. At the outset, learned APP has filed affidavit-in-reply. Taken on record. Copy of the same is made over to the other side.

2. During the course of hearing, learned Senior Counsel appearing on behalf of the Appellant has canvassed before this Court that the arrest of the present Appellant came to be effected without cancellation of regular bail granted to him by order dated 30.04.2025 in connection with Crime No. 137/2025 registered with MIDC Police Station, Ahilyanagar. It is his submission that irrespective of the fact that subsequently, provisions of Maharashtra Control of Organised Crime Act came to be applied to the present case, it was not open to

re-arrest of the Appellant without cancellation of previous bail. This, according to him, becomes illegal arrest and hence he seeks bail on that ground amongst other grounds. To support his submissions, he placed reliance on judgment of Division Bench of this Court in case of **Mahesh s/o Ramprasad Piparne and another vs. State of Maharashtra & another in Criminal Appeal No. 431/2026.**

3. Prima facie perusal of the record indicates that the issue sought to be canvassed now was never raised before the Trial Court. Though learned Senior Counsel has sought to convince this Court that this becomes a question of law and hence can be raised in appeal for the first time, this Court does not agree with the said preposition for the reason that the point sought to be raised requires recording of finding on the facts. Thus, it does not remain purely question of law but a mixed question of fact and law. In considered view of this Court, such mixed question of fact and law cannot be determined by the Appellate Court in absence of recording of any finding to that effect by the Trial Court.

4. At this stage, learned Senior Counsel for Appellant seeks leave to move such application before the Trial Court. He reserves his rights to take exception to the present order on merit.

5. Learned APP opposed the application.

6. Considering the peculiar facts and since the points sought to be made out by learned Senior Counsel for the Appellant require consideration firstly by the Trial Court, this Court finds it appropriate to dispose of the present appeal with liberty to the Appellant to move appropriate application before the Trial Court raising this point. In case such application is made Trial Court to pass appropriate order thereon in accordance with law. Needless to say that in case the application is decided against the Appellant, it would be open for the Appellant not only to challenge findings recorded on that application but also merits of the impugned order in the instant appeal.

7. In view of above, appeal stands disposed of in above terms.

(R. M. JOSHI, J.)

dyb