

Santosh

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

CRIMINAL WRIT PETITION NO. 1252 OF 2026

Prashant Udaykumar Patel ...Petitioner

Versus

The State Of Maharashtra ...Respondent

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2026.03.17
10:18:26 +0530

Mr. Bhushan Deshmukh, a/w Shashank Patare, for the
petitioner.

Mr. P. P. Malshe, APP for the State.

Mr. Sharad Patil, API, Crime Branch Unit-5, Thane, present.

CORAM: N. J. JAMADAR, J.

DATED: 13th MARCH, 2026

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 26th February, 2026 passed by the learned Additional Sessions Judge, Thane, whereby a non-bailable warrant has been ordered to be issued against the petitioner accused.
3. The petitioner is arraigned in CR No.259/2023 registered with Rabodi Police Station, Thane City, for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("the MPID Act, 1999"). The

petitioner was enlarged on bail by the learned Special Judge by an order dated 4th October, 2024.

4. It appears that on 17th December, 2025, the State has preferred an application for cancellation of bail under the provisions of Section 439(2) of the Code of Criminal Procedure, 1973. The petitioner has filed an affidavit-in-reply to the said application. However, it appears, the petitioner did not appear before the learned Special Judge during the course of the hearing of the said application for cancellation of bail. Thus, by the impugned order dated 26th February, 2026, the learned Special Judge was persuaded to issue a non-bailable warrant against the petitioner.

5. The learned Counsel for the petitioner submitted that the petitioner was not required to appear before the learned Special Judge in-person at the time of hearing of the application for cancellation of bail.

6. The learned Counsel for the petitioner placed reliance on an order passed by this Court in *Criminal Application No.2510/2008, Deepak Gopaldas Bajaj vs. Union of India and ors., dated 12th September, 2008*, wherein the precise question that arises for consideration in this case, was decided by this Court. In the said case, the following question was framed:

“Whether the Court of Sessions while deciding an application for cancellation of bail under Sub-section 2 of Section 439 of the Code of Criminal Procedure Code, 1973 has a power to direct the accused to personally remain present before the Court during the pendency of the application for cancellation of bail ?”

7. A learned Single Judge of this Court, answered the aforesaid question in the negative observing *inter alia* as under:

“10. In the present case we are dealing with the question whether the Sessions Court possesses a power to compel presence of an accused during the pendency of an application under Sub-section 2 of Section 439 of the Code of Criminal Procedure, 1973 especially when the trial is not pending before the Court of Sessions. On perusal of the Code it is apparent that there is no such of power vesting in the learned Sessions Judge. This is a case where there is a total absence of a power and as stated earlier, there is no inherent power vesting in the Session Court which could be exercised for ensuring the personal presence of the accused. If the case against the accused was pending before the Sessions Court which is considering the application for cancellation of bail, the position would have been different. If this Court is dealing with an application for cancellation of bail, in view of inherent power under Section 482 of the said Code, this Court can in an appropriate case issue direction to the accused to personally remain present at the time of hearing of application for cancellation of bail. However, a Court of Sessions does not have that power.

11. In the circumstances, in the present case, the direction issued by the learned Sessions Judge will have to be held as illegal. Even assuming that the applicant is evading service of order of detention or is evading arrest in other cases, while considering a prayer for cancellation of bail, the learned Sessions Judge cannot direct personal presence of the applicant on the date fixed for hearing of the application for cancellation of bail.”

8. Evidently, investigation is yet not complete. Charge-sheet has not been filed. The petitioner was, thus, not required to appear before the Special Court, in connection with the said proceeding. Undoubtedly, in an application for cancellation of

bail, the Special Judge may pass an appropriate order on the basis of the material on record. However, for the reason that the accused did not appear before the Court in-person at the time of hearing of the said application, the personal liberty, already secured by an order of bail, cannot be jeopardized by issuing a non-bailable warrant.

9. The Court is informed that the next scheduled date before the Special Judge is 27th March, 2026.

10. The petition, thus, stands allowed in the following terms:

- (i) The impugned order of issuance of non-bailable warrant stands quashed and set aside.
- (ii) The petitioner shall appear before the learned Special Judge on 26th March, 2026 either in-person or through an Advocate and work out the application for cancellation of the bail.
- (iii) The petitioner shall not seek any adjournment for the hearing of the said application for cancellation of bail.
- (iv) If the petitioner does not appear either in-person or through Advocate on 26th March, 2026, the learned Special Judge shall be at liberty to pass an appropriate order on the application for cancellation of bail filed by

the prosecution, on the basis of the material available on record.

The petition stands disposed.

[N. J. JAMADAR, J.]