Arunkumar Ramswarup Agarwal And Anr vs State Of Maharashtra And Ors on 18 February, 2020

Author: Sadhana S. Jadhav

Bench: Sadhana S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 959 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015
WITH
CRIMINAL BAIL APPLICATION NO. 1116 OF 2015

Pankaj S. Bansal. ..Applicant.
v/s.
Arunkumar Ramswarup Aggarwal & ors. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 693 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 1116 OF 2015

Arunkumar Ramswarup Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 694 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

Sunita Arunkumar Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

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WITH
CRIMINAL APPLICATION NO. 788 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

Arunkumar Ramswarup Aggarwal & anr. ..Applicants.
v/s.
The State of Maharashtra & ors. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 211 OF 2019
IN
CRIMINAL APPLICATION NO. 959 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

Arunkumar Ramswarup Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

WITH
CRIMINAL APPLICATION NO. 212 OF 2019
IN
CRIMINAL APPLICATION NO. 959 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

Sunita Arunkumar Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

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WITH
INTERIM APPLICATION NO. 1 OF 2019
IN
CRIMINAL APPLICATION NO. 693 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 1116 OF 2015

Arunkumar Ramswarup Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

WITH
INTERIM APPLICATION NO. 1 OF 2019
IN
CRIMINAL APPLICATION NO. 959 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

Sunita Arunkumar Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

WITH
INTERIM APPLICATION NO. 1 OF 2020
IN
CRIMINAL APPLICATION NO. 959 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1052 OF 2015

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Arunkumar Ramswarup Aggarwal ..Applicant.
v/s.
The State of Maharashtra & anr. ..Respondents.

Mr. Shyam M. Kalyankar, advocate for applicant in APPP 959/15.

Mr. Subhash Jha a/w. Mr. Siddharth Jha a/w. Ms. Sanjana Pardeshi

a/w. Mr. Hare Krishna Mishra i/b. Law Global Advocates, advocate for respondent No. 1.

Mr. Ghanshyam Upadhyay a/w. Mr. Kunal Jha i/b. Mr. Nilesh C. Ojha, advocate for respondent No. 2.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 18, 2020.

P. C. :

1 Heard the learned Counsel for the applicant, learned Counsel for the respondents and learned APP for State.

2 This is an application seeking cancellation of bail filed by the original complainant in Crime No. 403 of 2014 registered at Dadar Police Station for offence punishable under sections 406, 420 read with section 34 of the Indian Penal Code. Investigation was transferred to Economic Offences Wing and therefore, it registered as Crime No. 102 of 2014. The applicant herein seeks recall of the order dated 18/6/2015 passed by this Court, thereby granting bail to the respondents. Pursuant to the registration of offence, the respondents were taken into custody on 6/5/2015 and

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their application was rejected by the Sessions Court on 28/5/2015 and thereafter, this Court had granted bail on 18/6/2015.

3 This application has had a chequered history and therefore, it would be necessary to consider the case of the prosecution, the circumstances in which the bail was granted the prolonged hearing of the application seeking cancellation of bail.

4 It is the case of the prosecution that on 23/12/2014 Pankaj Bansal i.e. present applicant had lodged a report initially at Dadar police station alleging that the complainant was introduced to the accused through a common friends. That the accused happens to be the director of Sunshine Caterers Private Limited. They had received loan and investment from several people to be invested in their contract business i.e. for supplying foods to the Railway Catering

Services. It is alleged that the accused persons had offered good returns of the business, which they were carrying on and therefore, they had requested the complainant to invest in their business. Upon considering the lucrative proposal presented by the accuse complainant and his family members had invested total amount of Rs. 7,96,00,000/-. The said amounts were partly paid by cheques and partly by cash.

5 It is the case of the complainant that he had received interest on investment to the tune of Rs. 1,76,00,000/- till April, 2013. It is alleged that in the meeting dated 20th May, 2013 the

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meeting was held between the complainant and the accused persons. It was decided that the accused would pay total amount of Rs. 13 crores and accordingly 40 cheques were issued on 2 to 3 dif occasions. That the cheques were dishonoured and hence, accused had requested the complainant not to prosecute them for the offence punishable under section 138 of the Negotiable Instruments Act and to show their bonafide, the accused had reissued 40 cheques o again. Subsequently, the accused had expressed their difficultie the complainant and once again requested them not to present the cheques for encashment. However subsequently, the complainan had presented cheques for encashment. Said cheques were al dishonoured and therefore, he had issued a statutory notice to the accused. The accused had replied the said notice by stating that they had already paid the said amount and that no amount be paid towards cheque. Thereafter, the accused had a approached the complainant and requested for extension of time to repay the amount and not to present cheques which were given on third occasions. At the end of the period of 6 months, the complainant was constrained to initiate criminal proceeding and accordingly, had approached Dadar Police Station. T consideration the quantum of amount that was involved, investigation was transferred to Economic Offences Wing.

6 Accused persons had filed an application enlargement on bail. The investigating officer had filed a report that although accused had withdrawn an amount of Rs. 2.71 Crores,

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same was not used for the catering business. The report further reveals that the complainant had deposited an amount of Rs. 7 Crores 17 Lakhs in the account of both the accused person out of which an amount of Rs. 5,66,30,000/- was misappropriated by the accused. was also contended by the Investigating Agency that the amount of Rs. 8.12 Crores included cash of Rs. 1.87 Crores.

7 The accused had filed Bail Application Nos. 151/BA/20 and 153/BA/2015. Initially, it was contended before the learned Magistrate that the entire transaction was of civil nature and that there was no entrustment, as contemplated under section 406 of the Indian Penal Code. Learned Magistrate in the Order dated 19/5/2015 had considered that the informant i.e. present applicant had filed summary suit before the Hon'ble High Court bearing Summary Suit Nos. 980/14 and 981/2014, wherein it was specifically contended that friendly loan was extended to the accused. It was also observed by the Magistrate that prior to the institution of the suit, the informant had approached the police for taking suitable action against the accused. It was observed by the learned Magistrate that the prosecution had made out sufficient ground showing involvement of the accused in the commission of the offence. Investigation was in progress and hence, the application was rejected on 19/5/2015.

8 The accused had approached the Sessions Court by filing Bail application No. 1474 of 2015. Learned Sessions Court while

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deciding the said application had observed that the accused had voluntarily placed on record the memorandum of understandings executed between the parties on 20 th May, 2013 and 23rd May, 2013, wherein outstanding liability of Rs. 13 Crores was admitted by the accused. At that stage, it was contended by the accused that due to genuine financial crisis, outstanding amount could not be paid by the accused No. 1. Accused No. 2 had raised the plea that she had only acted on the direction of her husband i.e. accused No. 1 and she is in no way concerned with the transactions between her husband and the informant. Learned Sessions Court by an order dated 28 th May, 2015 was pleased to reject said application.

9 The accused approached this Court under section 439 of the Code of Criminal Procedure, 1973 on 28/5/2015. At the t hearing of the application, it was contended that on 15/6/2015 the accused had voluntarily approached the complainant and offered to amicably resolve the matter and further offered to pay sum of Rs. 12,00,00,000/- in minimum installment of Rs. 50,00,000/- and claimed amount will be paid within one year from the grant of bail by disposing of their properties. It was also agreed that an amount of Rs. 50 Lakhs would be paid on the 18 th of each month. Memorandum of Understanding was executed between the accused and the informant and his family on 15/6/2015. Memorandum of Understanding was placed before th voluntarily on 18/6/2015 in the course of hearing of Bail Application No. 1116 of 2015. Learned Senior Counsel Mr. Gupte appearing for

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the accused, on the basis of the instructions received from the family members, had undertaken to abide by the consent terms incorporated in the Memorandum of Understanding executed on 15/6/2015. of the Memorandum of Understanding was taken on record and marked as "X" for the identification. This Court (Coram : K.R. Shriram, J) had specifically observed that the offence alleged against the accused were compoundable offence as contemplated under section 320 of the Code of Criminal Procedure, 1973 and therefore, they were granted bail by this Court (Coram: Smt. Sadhana S. Jadhav, J) subject to the undertaking given by the respondents to abide by the terms and conditions incorporated in the Memorandum of Understanding. The parties had also agreed to file a Writ Petition seeking relief of quashing of FIR by consent, in view of the Memorandum of Understanding filed by them.

10 On 10/7/2015 in Summary Suit Nos. 980 of 2014 and 981 of 2014 alongwith Notice Motion (L) Nos. 2766/2014 and 2767/2014 respectively before this Court (Coram: K.R. Shriram, J), it wa contended by the Counsel for the Plaintiffs and defendants that the parties have amicably resolved the matter. The Counsel appearing for defendants had categorically submitted that the plaintiffs and defendants have signed Memorandum of Understanding. plaintiffs and defendants were personally present in the court. Undertakings were given by the parties that memorandum understanding is accepted and that they would abide by the said terms and conditions. In fact, Minutes of the Order were tendered to

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the Court which were marked at Exh. X. In view of the memorandum of understanding and the undertakings, both the suits were disposed of and the Court had further directed refund, if any, of the Court fees in accordance with law. The minutes of the order was sign by both the parties and clause (3) of the Minutes of the Order reads as follows :

> "The Defendants undertake to abide by the undertakings as contained in the said Memorandum of Settlement dated 15/6/2015. The undertakings are accepted."

11 It is pertinent to note, at this stage, that one Dalchand H. Gupta, who happened to be close relative of the informant Mr. Bansal, had also filed Summary Suit (L) No. 982 of 2015 in this Court and on 28/9/2015 this Court (Coram : R.P. SondurBaldota, J) had passed an order against M/s. Sunshine Caterers Private Limited and ors. that there were consent terms drawn between the parties and their respective advocates had filed the same on record. Advocate Ms. Wadkar who appeared for the defendants (i.e. accused in Crime No. 102 of 2014) had submitted, that the Directors had signed the consent terms in her presence and she identified their signatures. In view of the same, the suit was disposed of in terms of Consent Terms. In the said suit, present respondents were defendant Nos. 2 and 3 and their daughters and son aged about 28 years(housewife), 25 years(housewife) and 23 years respectively were defendant Nos. 4, 5 and 6. It was also accepted by the present respondents that they had issued several post dated cheques, which would be returned after

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the amounts were duly paid.

12 In view of the memorandum of understanding and the order dated 18/6/2015 granting bail to the respondents, on 18/7/2015 first installment was due. The same was paid. On 29/7/2015 the parties had exchanged emails in respect of the due payments. On 10/9/2015 advocate notice was issued to the respondents calling for payment.

13 On 17/11/2015 an application for cancellation of bail was filed. In the said application, the applicant(complainant) had specifically contended that on the day of execution of Memorandum of Understanding, the respondents herein had paid an amount of Rs. 50 Lakhs. On 18/7/2015 2 cheques were issued by the respondents to the tune of Rs. 25 Lakhs each. The respondents had requested the applicant to deposit the cheque on 20/7/2015 and on 20/7/2015 there was a request not to deposit the cheques. But by then, cheques were already presented for encashment. The cheques issued by the respondent No. 2 Sunita Agarwal, drawn on ICICI Bank to the tune of Rs. 25 Lakhs were honoured. The cheque dated 20/7/2015 in favour of Sushil Bansal was dishonoured. However, respondents in lieu of the said cheques had transferred an amount of Rs. 20 Lakhs by RTGS and Rs. 5 Lakhs on 22/7/2015. The cheque which was issued on 18/8/2015 was dishonoured. In lieu of which, the respondents paid Rs. 6 Lakhs by RTGS and Rs. 12,50,000/- on 24/8/2015 and Rs. 2,50,000/- on 25/8/2015 and amount of Rs. 15,70,000/- and Rs.

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2,80,000/- were paid by RTGS on 20/8/2015. The amount of Rs. 6,50,000/- was paid on 21/8/2015.

14 When the third installment was due, on 1/9/2015 two cheques were issued. However, request was made vide email dated 18/9/2015 not to deposit said cheques before 7/10/2015. The respondents had paid Rs. 32 Lakhs and Rs. 2 Lakhs on 8/10/2015 and Rs. 10 Lakhs on 21/10/2015 and Rs. 10 Lakhs on 28/10/2015 to the applicant. The schedule that was given by the respondents for payment of installment was not abided by and therefore, advocate's notice was issued and the applicant had filed an application for cancellation of bail on 17/11/2015.

15 The respondents appeared in the said application filed under section 439 (2) of the Code of Criminal Procedure, 1973. On 22/12/2015 a submission was made before the Court (Coram: A.S. Gadkari, J) that the respondents are in the process of collecting funds, which are due and payable under the memorandum of understanding dated 15/6/2015 and time of four weeks was granted to comply with the undertaking given in the said MOU and the matter was adjourned for 4 weeks.

16 On 19/1/2016 learned Counsel Mr. Raja Thakare appeared for respondent No. 2 and submitted that his client i.e. respondent No. 2 would make payment of Rs. 50 Lakhs to the applicant on or before 15/2/2016. The Court had accepted the said statement. On 15/2/2016

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the applicant herein had admitted that in pursuance to the submission made by Mr. Thakare on 19/1/2016 respondent Nos. 1 and 2 had paid an amount of Rs. 50 Lakhs to the applicant. The Court had recorded that on instructions of his client, learned Counsel Mr. Shirsat holding for Mr. Thakare, had submitted that the next installment of Rs. 75 lakhs would be paid to the applicant on or before 14 th March, 2016. The matter was posted on 16/3/2016. The matter had not appeared on board and therefore, on 15/3/2016 the applicant had circulated the matter and circulation was granted for 22/3/2016, when the learned Counsel for the respondents had sought time till 23/3/2016. The matter was circulated before this Court on 15/6/2016 and was posted on 21/6/2016. On 21/6/2016 none appeared for the respondents. In paragraph-2 of the order dated 21/6/2016 this Court had observed as follows :

> "Learned Counsel for the applicant fairly submits that on 1.5.2016 no amount was paid. On 1.6.2016 an amount of Rs. 30 lakhs was paid and in the last week, respondents had paid an amount of Rs. 35 lakhs approximately. It would prima facie appear that the respondents are in the process of paying. In fact, it was incumbent upon the respondents to abide by the undertaking given to this Court. Since it was an undertaking given to the Court, non-compliance of the same would amount to contempt. However, as on today, considering the bonafides of the respondents that they are in the process of paying, it is hereby directed that the respondents shall deposit an amount of Rs. 45 Lakhs on or before 1.7.2016."

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17 On 1/7/2016 learned Senior Counsel Mr. Shirish Gupte

appearing on behalf of the respondents submitted that the respondent is in the process of making arrangement of amount of Rs. 45 Lakhs and till today he has paid almost Rs. One crore 24 Lakhs and that the respondents had shown bonafides by making an attempt to abide by the orders of the Court. It was also submitted that the charge sheet is filed.

18 On 21/12/2016 Learned Counsel for the respondents sought time to take instructions as to whether the respondents desire to abide by the undertaking given to the court. On 23/12/2016 at the request of the advocate on behalf of the respondent Nos. 1 and 2 matter was adjourned to 27/1/2017.

19 This Court had different assignment and therefore, due to paucity of time, matter was adjourned on 2 nd March, 2017. On 19/6/2017 matter was listed on the board of Justice Prakash D. Naik, who had passed an order of "Not before this Bench." On 10/7/2017 the matter was mentioned out of turn before Court (Coram: Revati Mohite Dere,J) and was adjourned to 12/7/2017 and on 12/7/2017 it was directed that the matter be placed before the appropriate Court. On 27/7/2017 advocate Ms. Sanjana Pardeshi had requested this Court to hear the application alongwith Criminal Application Nos. 693 of 2017 and 694 of 2017 filed by the respondents.

20 On 23/8/2017 this Court had observed the stages of the

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proceedings and that there were certain encumbrances on the said property. It was observed by this Court that on 1/4/2016 the respondents were present before the court and had agreed to pay sum of Rs. 55 Lakhs to the complainant on 24/4/2016 and had also filed an affidavit to that effect which was in the form of an undertaking. The same was accepted by the court and this Court had observed that no coercive action be taken and the matter was adjourned to 25/4/2016.

21 By Criminal Application No. 693 of 2017 and 694 of 2017 the respondents had prayed that they be relieved from t undertaking given in paragraph-3 of the Order dated 18/6/2016 and also from the memorandum of understanding dated 15/6/2015. was contended in paragraph-8 of the said application that t Memorandum of Understanding dated 15/6/2015, based on which

this Hon'ble Court passed an order dated 18/6/2015 granting bail to the applicant, has thus been fraudulently obtained and which certainly does not therefore, bind the applicant. Upon considering the said contention this Court had observed that the said contention would amount to playing fraud upon the Court as the accused applicant were personally present before the court and had given an undertaking to that effect.

22 In the above circumstances, the Court had directed the applicants in Criminal Application No. 693/2017 and 694/2017 to remain present before the Court on 15/9/2017 and upon failure to

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attend the Court, the Court would be constrained to take coercive action. On 15/9/2017 it was submitted by the Counsel for the applicants that the applicant in Criminal Application No. 693 of 2017 was present however, the applicant in Criminal Application No. 694 of 2017 had expressed her inability to attend the court as she was indisposed. Learned Counsel after advancing lengthy argument on merits of the matter had prayed for carrying out amendment in the application and in the interest of justice, liberty was granted subject to the condition that the amendment would be carried out within one week.

23 On 9/1/2018 this Court had observed that time was granted to the learned Counsel for the respondents to file written submissions in order to save time of the Court. The written submissions were not filed within time but they were tendered across the bar and copy of the same was furnished to the Counsel for the applicant only at 4.45 p.m. when the matter was called. Mr. Jha, Learned Counsel for the respondent No.1 had submitted that he would take an hour to make his oral submissions. The matter was directed to be heard on 7/9/2018.

24 On 6th October, 2018, the matter was heard till 5.20 p.m. the learned Counsel had expressed his inability as it would not be possible for him to continue the arguments, although the Court was willing to proceed only in order to conclude the hearing of the matter. It was also observed that lengthy arguments were being

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tendered. The learned Counsel for the respondents had appeared just before the closure of the first sessions and requested that the matter be adjourned to a future date. It was demonstrated by the applicant that in an application seeking quashing of FIR, no relief was granted by the Division Bench, however, trial was expedited. This Court had observed that the trial being expedited, could not be a good ground for adjournment.

25 It was submitted that recording of evidence has commenced on 20th March, 2018 and that once trial is over, there would be no question of considering an application for cancellation of bail. It was vehemently argued on the basis of the previous orders passed by this Court that upon commencement of trial, application seeking cancellation of bail would loose its significance. At the end of the session, the learned Counsel refused to continue the matter on 8 th October, 2018 since he wanted to complete recording of evidence before the trial Court and therefore, expressed his inability to appear before this Court. This Court had observed that the application under section 439(2) of the Code of Criminal Procedure, 1973 is pending for more than 3 years only at the behest of the Counsel for the respondents and had also observed that at any rate inconvenience of the advocate could never have been a special reason for keeping the matters pending like the present one. It was apparent, from the way the matter was proceeding, that the learned Counsel for the respondent No. 1 was only trying to protract the final decision of the application by reading out entire roznama, 16 citations of various

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courts and had not even touched the facts of the case. At 5.15 p.m. learned Counsel for the respondent No. 1 submitted that he would take one more hour to address the Court and thereafter, according to him, learned Counsel for the respondent No. 2 would take another hour. Learned Counsel for the respondent No. 1 insisted upon referring to substantive evidence recorded in the trial court although the Court had specifically expressed that the application seeking cancellation of bail under section 439(2) of the Code of Criminal Procedure, 1973 was filed much before commencement of the trial or even framing of charge and it was only necessary to see as to whether there is a breach of undertaking given to the Court on the day when the application seeking cancellation was filed. The matter

was part-heard on several occasions. The Court had made specific observations. At the cost of repetition, it was submitted by the learned Counsel for the respondent No.1 that there is corruption in the police machinery and in Economic Offences Wing and due to vested interest false FIR was filed. There is no occasion to consider the same.

26 It was again reiterated in the said order that on 1/4/2018 the respondents were present before the court in person and had filed an affidavit-cum-undertaking and also submitted a chart of the schedule of payment to be made to the complainant. Second undertaking was given by the respondents after filing of the application under section 439(2) of the Code of Criminal Procedure, 1973 was filed. The respondents had addressed the Court on 1 st

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April, 2018 and were personally questioned as to whether said affidavit is being filed voluntarily, only to ensure that it was not filed under any coercion or due to any extraneous reasons and the respondents had candidly submitted and addressed to the Court that affidavit is being filed voluntarily. The respondents had also submitted that the Schedule had been complied with on four occasions in order to show their bonafides to comply with the undertakings and the payment schedule.

27 Learned Counsel for the respondent No.1, despite being shown the orders passed earlier, submitted that the Memorandum of Understanding dated 15/6/2015 has been obtained fraudulently and therefore, it is not binding upon the respondents.

28 This Court had perused the orders passed by Justice K.R. Shriram wherein the respondents had personally appeared before the Court and signed the Minutes of the Order and given an undertaking to comply with the compromise decree. As on today, because of the pendency of the criminal proceedings, execution of the said decree also has been held in abeyance. In fact, the Judgment of the Civil Court is Judgment in Rem and therefore, there was no reason to keep it in abeyance. However, the respondents have flouted said orders also. The contention that they are not liable to pay single farthing to the complainant was reiterated and therefore, this Court had felt the presence of the respondents would be necessary in the court and the matter was adjourned to 9/10/2018.

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29 On 9th October, 2018 an adjournment was sought on the ground that the order dated 6th October, 2018 needs to be impugned and challenged before the Hon'ble Apex Court. In fact, the order dated 6th October, 2018 was not an order deciding the rights of the parties, except for the reasons assigned in the order. On that day, the learned Counsel had filed an application that preliminary issue be decided in respect of maintainability of the application commencement of the trial. In fact, the application under section 439(2) of the Code of Criminal Procedure, 1973 was filed much before the trial was expedited.

30 The said application was filed only after the advocate had chosen to proceed with the matter on merits by touching legal aspects on 6th October, 2018 and for the first time, new contentions were raised. They had expressed an apprehension that the accused would be taken into custody forthwith. This Court had observed that the Order dated 6th October, 2018 was loud and clear for the reasons for which respondents were directed to remain present in the court and no inclination of taking the respondents into custody except by following due procedure of law. It appears that the respondents were made to believe that there is a likelihood of being taken into custody pursuant to which the aforesaid application was filed.

31 It appears that the order dated 6th October, 2018 was challenged before the Apex Court and the Apex Court had declined to

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interfere and dismissed the petition and had observed as follows :

> "The High Court would decide the matter in accordance with law taking into account all contentions that may be raised by the parties."

Respondents were granted liberty to approach in the event the final order of the High Court goes against them.

32 On 11th October, 2018 it was submitted that a Special Leave Petition is filed before the Supreme Court and therefore, an adjournment was sought.

33 On 21/11/2018 it was informed that Additional Chief Metropolitan Magistrate has passed some order and liberty was sought to place on record the said order and it was shown that the petition before the Apex Court would not be heard atleast till 14/12/2018. On 5/12/2018 time was again sought on account of pendency of the petition before the Supreme Court.

34 On 17th March 2019 it was brought to the notice of this Court that the respondents have filed an application before the Hon'ble the Chief Justice seeking transfer of the mater from this Court. This Court had enquired as to why it was not pointed out on the earlier occasions and it was informed that it is a private communication between advocate and the Hon'ble the Chief Justice and therefore, it was not necessary to bring it to the notice of this Court.

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35 The respective Counsel had again referred to the order of the expeditious trial and the progress of the trial. The respec Counsel did not wish to proceed with the matter on the ground that they were not aware of the next date, although the board was published on 2nd March, 2019 and that they had presumed that the matter is on 14th March, 2019. This Court had observed the manner in which the learned Counsel for the respondent No. 1 alongwith the Counsel for the respondent No.2 were raising frivolous issues before the Court on every date and therefore, this Court was of the opinion that the application would be heard after an appropriate order is passed by the Hon'ble the Chief Justice.

36 On 6/9/2019 the matter was again kept part-heard. 11/10/2019 learned Counsel for the respondent No.1 had again requested for an adjournment on the ground that he had filed an application before the Hon'ble Apex Court seeking clarification of the order dated 12th April, 2019. The said application clarification was filed only on 19/9/2019 although the said order was

passed on 12/4/2019. It is pertinent to note that by an order dated 6th November, 2019 the Supreme Court had passed following orders:

> " These are the applications for restoration.
> Heard the learned Counsel for the applicants.
> No clarification of the order dated 12th April, 2019 is called for.
> M.A. No. 2116 and 2117 of 2019 for clarification/direction are dismissed."

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37 It appears from the record that on 30/9/2019 the applicant i.e. original complainant had addressed letter to the Hon'ble the Chief Justice and had pointed out the roznama to the Hon'ble the Chief Justice seeking expeditious hearing of the present application.

38 Needless to say, that the Hon''ble the Chief Justice had directed the Registry to place the application before this Court (Coram : Smt. Sadhana S. Jadhav, J) and in view of this, this Court was bound to hear the matter.

39 The respondents had filed Criminal Application Nos. 693 of 2017 and 694 of 2017 on 19/7/2017 praying for relieving the applicants from undertaking which has been recorded in paragraph-3 of the order dated 18/6/2015. In paragraph-19(c) of the applications, it was mentioned that on 1st April, 2016, presence of the applicant was recorded but the complainant had played fraud not only on the applicants, but also on the Court and therefore, the applicants sought to be relieved from the affidavit dated 23rd March, 2016 and so also the observations made by this Court in its order dated 1 st April, 2016 and similarly from all such statements and submissions made on behalf of the applicants. It was submitted that Summary Suit Nos. 980 of 2014 and 981 of 2014 were filed on 21/11/2014 and within a span of 36 days, the complainant has filed frivolous and vexatious FIR at Dadar Police Station.

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40 In view of the above discussions, it is more than clear that fraud has been practised on this Court on the civil side, where Summary Suit No. 980 of 2014 and 981 of 2014 were filed and decree has been obtained on 28/9/2015 and therefore, the respondents sought to be relieved from their affidavit and undertakings. It is pertinent to note that after 2 years of the said undertakings, for the first time, the accused(respondents) were seeking to be relieved from the undertaking given on the civil side as well as criminal side. In fact, the consent decree was passed and is binding upon the parties. It is pertinent to note that it has not been brought to the notice of this court as to whether there is any application before the Civil Court who has passed consent decree. The respondents were present before the Court. Not a word had been stated.

41 The Supreme Court in the case of Bank of Baroda v/s. Sadruddin Hasan Daya and anr. reported in 2003 Supp(6) SCR 764 had observed that -

> "When a person appearing before a court files an application or affidavit giving an undertaking to the court or when he clearly and expressly gives an oral undertaking which is incorporated by the court in its order and fails to honour that undertaking then a willful breach of the undertaking would amount to an offence punishable under the Act."

That for two years, the respondents appeared before the Court on Civil and Criminal side and had submitted that they wish to abide

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by the undertaking and in fact, had acted upon the undertaking.

42 The respondents had filed Criminal Application No. 211 of 2019 and prayed for dismissal of the Criminal Application No. 959 of 2015, in view of the certain admissions in the cross-examination of P.W. 1.

43 Criminal Application No. 788 of 2016 was filed seeking direction to defreeze the accounts freezed by Economic Offences Wing on 12/5/2015, as the applicants desired that the additional amount, which was accumulated by way of interest, on the fixed deposit with Indian Railway, which if would be defreezed, could be used to pay to the complainant. It is pertinent to note that C.R. No. 454 of 2015 came to be filed at the behest of Ajay Dalchand Gupta. In that case also, the respondents had filed consent terms and the summary suit between Dalchand Gupta and the respondents was decreed on 28/9/2015. In the said consent agreement, it was agreed that the account which was freezed by Economic Offences Wing was in the name of the applicants i.e. in the name of present respondents and that amount would be transferred to Ajay Dalchand Gupta. The respondents had specifically stated that they wish to comply with the consent terms and therefore, had prayed for defreezing the account. The consent terms were signed by the parties. Summary Suit No. 982 of 2015 was disposed of by this Court(Coram: R.P. SondurBaldotta,J) on 28/9/2015, in which the advocate for the defendants had identified their signatures before the Court and the suit was disposed

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of in terms of the consent terms.

44 The respondents filed interim application No. 1 of 2019 praying for expunging the observations made by this Court in its order dated 6th October, 2018 in terms of paragraph-5 of the order as well as recall/expunge the observations made by this Court in the order dated 7th March, 2019 in terms of assertion in paragraph-6 of the order, as the said observations were neither desirable nor warranted. Prayer was also made to accord the same treatment to the application filed by the original complainant to that of treatment meted out to the other cases. This Court has observed the conduct of the advocates on every date of hearing and it was loud and clear that a clear attempt was made to browbeat the Court.

45 It would be necessary to note that the learned Counsel for the respondents cited 29 orders of various courts and all the citations were being read right from the fact sheet, thereby consuming valuable time of the Court and to protract passing of any orders and rendering the application infructuous by passage of time and in the meanwhile the trial would be completed. The gist of the arguments advanced was that in most of the cases, the application seeking cancellation of bail was either withdrawn or rejected after the filing

of charge-sheet or framing of charge and in the present case the trial had commenced and therefore, there was no reason to hear the application.

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46 Learned Counsel for the respondents has placed reliance upon the Judgment of the Apex Court in the case of Biman Chaterjee v/s. Sanchita Chatterjee & anr. reported in 2004 Cri. L.J. 1451, the Hon'ble Supreme Court had observed that -

> "non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise."

In the facts of the case, there was no written compromise and the bail was granted after noticing the fact that there was possibility of compromise. It was pointed out that there were negotiations going on for finalisation of compromise and therefore, question of appellant contravening the terms of compromise did not arise.

47 In the case of Shri Pritpal Singh v/s. State of Bihar an anr. reported in 2002(2) ACR 1927 SC, the Hon'ble Supreme Court had refused to cancel the bail given to the accused in the facts of the case that the dispute was in respect of the eviction of the appellant, who was the tenant, from the premises of which the respondent is the owner. There was compromise between the parties that the appellant would pay certain amount and get the premises vacated and it was alleged that the appellant had failed to comply with the terms of compromise by not vacating the premises in question. And therefore, the Hon'ble Supreme Court had refused to

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intervene.

48 In the case of Bal Kishan Das v/s. P.C. Nayar, reported in 1991 SCC (Cri.) 1055, the Hon'ble Supreme Court had observed that matter is purely of civil nature. There was an arbitration proceedings and the matter is pending for more than 17 years. Proceedings before the Chief Judicial Magistrate was quashed. The Counsel had also relied upon the orders of the Sessions Courts of Maharashtra & Sessions Courts of other states knowing fully well that they would not have any precedential value.

49 In some cases, Sessions Court had insisted upon depositing money for grant of bail and this Court had held that the courts cannot act as recovery agents and therefore this Court had refused to cancel the bail.

50 In the present case also, it cannot be said that the respondents herein have not only abided by the terms of compromise, but subsequently, upon being enlarged on bail, the respondents appeared before the Court, voluntarily and gave an undertaking. They even partly abided by the undertaking and then it was contended that fraud was played upon them. In fact, the respondents played fraud upon the Court on civil as well as criminal side.

51 In Criminal Writ Petition No. 3575 of 2019 this Court

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(Coram: Revati Mohite-Dere,J) was hearing an application challenging the order cancelling the bail of the petitioner therein. There was breach of consent terms. This Court had observed as follows :

> "As there was breach of the Consent Terms, the bail of the petitioner and the other co-accused was cancelled. It is pertinent to note, that the petitioner never objected to the conditional bail, granted by the learned Magistrate vide order dated 25th April, 2018 and in fact executed P.B. and S.B. of Rs.15,000/-, that the Consent Terms will be complied with.
>
> 10. There is no infirmity warranting interference in writ jurisdiction. The learned Additional Sessions Judge has rightly directed the petitioner and the other co-accused to appear before the trial Court and surrender themselves

within 15 days from the date of order with liberty to file fresh bail application. The trial Court was also directed to decide the bail application on merits."

52 The distinguishing features in the cases relied upon and the present case is that for 2 years after granting bail, the respondents had never raised a word that the Memorandum of Understanding was signed under coercion or by playing fraud. In fact, they had appeared before the court i.e. this Court as well as the Court which was trying Summary Suit Nos. 980 of 2014 and 981 of 2014 and had signed consent terms. In the present case, it was the respondents

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who had in fact voluntarily given schedule of payment before this Court. This Court had also observed that the parties would file petition seeking quashing of FIR by consent. In the eventuality, the respondents had expressed even once that they did not wish to abide by the terms, since the first memorandum of understanding was signed while they were in custody and that they wanted to be released on bail, this Court would have considered the application on its own merits. It was at the behest of the respondents that the compromise terms were being entered into. It is for the first time, by Criminal Application Nos. 693 of 2017 and 694 of 2017, they were seeking prayer for being relieved from the undertaking. In f there was no complaint made by the respondents either to the police station or to any Magistrate contending therein that memorandum of understanding has been obtained by playing fraud or under coercion. No grievance was made to this court although fair opportunity was given to them on the civil side as well as criminal side and eve after application for cancellation of bail was filed, they abided by the terms. It is not their case that the Court had directed them to deposit the money. It was out of their own volition that they had signed consent terms. They had sealed memorandum understanding with their own seal after they were released on bail without complaint. The question for determination is what made the respondents suddenly change their minds and seek to be relieved from the undertaking. The possibility of considering the prayer for relieving them of their undertaking could also have been considered provided the respondents surrendered after which their application

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would be heard on its own merits. At the cost of repitition it needs to be observed that the order of bail was passed only having regard to the MOU and not on merits.

53 Learned Counsel for the respondents had filed Criminal Application No. 1 of 2020 praying that-

(a) that this Hon'ble Court may be pleased to clarify the circumstances under which on 11th October, 2019 this Hon'ble Court (Coram : Sadhana Jadhav, J) had felt the need to call the police in the court room during the course of a brief arguments;

(b) that this Hon'ble Court may be pleased to clarify that calling police in the court room as was indicated by this Court(Coram: Sadhana Jadhav, J) on 11 th October, 2019 was for what purpose and object to be achieved and whether hence forth lawyers appearing in the court would be required to argue under the shadow or presence of police or after seeking their permission and consequences that could follow upon refusal of on advocate to do so;

54 On 11/10/2019 this Court had observed that the learned Counsel for the original applicant has also stated that the respondent is seeking expeditious trial and proceeding with the trial and once again respondents had filed petition seeking quashing of FIR before the Division Bench bearing No. 123/2019 and 124/2019. This Cour had requested the learned Counsel for the respondents to restrict their

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arguments, but to no avail.

55 In fact, in the course of hearing at about 5.10.p.m. when the court was about to rise, hot words were exchanged between both the counsel. They raised their voices. Learned Counsel for the respondents had gone to the extent of dictating terms to this Court in a loud voice and both the counsel were arguing and therefore, this Court had suggested that the Court would be constrained to call the police. However, the same is not reflected in the orders and yet an application was filed seeking clarification. This Court is of the firm opinion that the Court is not bound to give clarification of any action taken in the course of discharging their duties passed for maintaining

decorum of the court and the sanctity of the court proceedings. The independence of judiciary cannot be overshadowed by the Counsel who attempt to take the Courts for granted.

56 Most of the times, it is seen that various modes are adopted for protracting the proceedings. There is no fear of the Court and threat was being passed to this Court that every interim order deserves to be challenged before the Apex Court, whether it warranted any merit or not. Most of the times even observations of this Court were challenged, as was done in respect of the order dated 6th October, 2019. Even on the last date, learned Counsel was insisting upon deciding Interim Application No. 1 of 2020 before deciding the Criminal Application No. 959 of 2015 finally. Finally, this Court had allowed the learned Counsel to read evidence recorded

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before the trial Court.

57 It is submitted by the learned Counsel repetitively that there has to be consistency in the order. There is no difficulty with this proposition as long as facts are similar. In none of the cases cited by the learned counsel for the respondents, it is seen that the accused had appeared before the court in person and given an undertaking with an affidavit appended thereto and agreed to abide by the memorandum of understanding. Today the respondents are seeking to resile from their undertaking after enjoying bail for four years. The same cannot be countenanced. This Court would have proceeded to hear the matter on merits and there would have been no occasion to decide an application for cancellation of bail only for non-compliance of the undertaking. Even today the respective Counsel have submitted that in fact criminal law ought not to have been initiated against respondents and the FIR is registered fraudulently. This Court cannot be oblivious of the fact that two petitions filed on two different occasions seeking relief of quashing of FIR have been rejected by the Hon'ble Division Bench of this Court and the said orders were never challenged before the Surpeme Court.

58 In fact, it is painful to observe that it is only orders of the Court which speaks for itself. Courts generally refrain reprimanding advocates appearing unless it impedes the administration of justice. In the interest of justice of the litigants, this Court feels that it is incumbent upon the Court to hear the Counsel representing

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the litigants keeping solely in mind the interest of litigants.

59 In the present case, the Memorandum of Understanding might have been signed between the parties, but the question remains that an undertaking was given to the Court. In all cases cited by the learned Counsel, the memorandum of understanding was signed between the parties and not before the court. On 1/4/2016, this Court had even enquired as to whether the respondents would seek time to file affidavit and undertaking. However, it was the respondents who were of the opinion that they would file it forthwith and accordingly had filed it. The conduct of the respondents would therefore, necessitate cancellation of bail of the respondent No. 1.

60 As far as respondent No. 2 is concerned, she is the wife of respondent No.1. She was not concerned with the day to day affairs of the business of the catering company. Submission is made by the learned Counsel for the respondent No. 2 that she had only agreed with the husband and had signed the papers at the behest of her own husband and therefore, this Court is not inclined to pass any coercive orders as far as respondent No. 2 is concerned.

61 It appears that the memorandum of understanding was filed only to mislead and obtain reliefs only to be resiled subsequently.

62 This Court in the present proceedings had actually insisted

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upon the advocate for the respondents to restrict their arguments to the merits of the matter, instead of giving discourse on the conduct of the police or the present situation in social forum. The advocate for the respondents were insisting that the Court should disclose its inclination as to whether the Court was inclined to allow the

application or reject the same. A judge is not bound to or expected to express it's mind either ways in the course of hearing of the proceedings. It needs to be noted at this stage that on every date of hearing since 2017 whole afternoon session was consumed by the respective Counsel appearing for the respondents and it further needs to be noted that there were hardly any queries made to the Counsel except asking as to whether lengthy arguments were necessary. All the orders since 6/10/2018 are self speaking and the manner in which the matter was conducted by the respondents. It would therefore, be necessary to read the present order alongwith orders dated 23/8/2017, 15/9/2017, 9/1/2018, 6/10/2018, 9/10/2018, 16/10/2018, 21/11/2018, 5/12/2018, 6/3/2019, 16/10/2019 and thereafter, the Court was constrained to hear the matter on day to day basis.

63 In the case of Sanjay Chandra v/s. C.B.I. decided on 23rd November, 2011, the Hon'ble Apex Court has observed that-

> "The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case."

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64 Irrespective of the fact that whether bail was granted only on the basis of the memorandum of understanding, this Court cannot ignore the fact that the respondents remained present before this Court, addressed the Court and had given an affidavit-cu undertaking that they would abide by the memorandum understanding and had partly acted upon the memorandum of understanding.

65 In the case of Patel Rajnikant Dhulabhai & anr. v/s. Patel Chandrakant Dhulabhai & ors. Reported in AIR 2008 S.C. 3016, the Hon'ble Apex Court has held as follows:

> "following conditions must be satisfied before a person can be held to have committed a civil contempt;
> (i) there must be a judgment, decree, direction, order, writ or other process of a Court (or an undertaking given to a Court);
> (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking given to a Court); and
> (iii) such disobedience of judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking) must be willful."

> "punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt."

66 In the present case, since the act was committed in the proceedings seeking cancellation of bail, it would call for cancellation of bail of Respondent No. 1. There is no doubt that since 2017 there

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has been tactful move to disobey the undertaking given to the Court and even to protract the matter as far as possible so as to see that the trial would conclude.

67 In the case of Dhananjay Sharma v/s. State of Haryana reported in (1995) 3 SCC 757, the Hon'ble Apex Court has observed as follows :

> "The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message perculates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice."

68 Halsburi Laws of England 4th Edition Volum 9 page 44 observes that breach of an injunction or breach of undertaking given to a Court by a person or corporation in pending proceedings on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.

69 There is no doubt that disobedience of the respondents is willful and intentional. Valuable time of the Court has been consumed in several proceedings including civil proceedings. In the case of Ram Niranjay Roy v/s. State of Bihar reported in (2014) 12

SCC page 11, the Hon'ble Apex Court has held that-

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> "while dealing with the nature and scope of power conferred upon this Court and the High Court, being courts of record under Articles 129 and 215 of the Constitution of India respectively, this Court observed that the said power is an inherent power under which the Supreme Court and the High Court can deal with contempt of itself. The jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215. This Court further clarified that the constitutionally vested right cannot be either abridged, abrogated or cut down by legislation including the Contempt of Courts Act."

70 At the cost of repitition, it shall be mentioned that the terms of the memorandum of understanding were never challenged before this Court contending that they were obtained under coercion, fraudulently or against wish of the accused/respondents. There w every occasion for the respondents to challenge the same on merits. However, it was the respondents who personally appeared before the Court and gave an undertaking that they wish to abide by the terms and conditions contemplated under the memorandum understanding.

71 In the same Judgment in the case of Ram Niranjan Roy (cited supra), the Hon'ble Apex Court has held that-

> "when a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary. If the courts do

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> not deal with such contempt with strong hand, that may

result in scandalizing the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempts committed in the face of the court need a strict treatment."

72 This Court is of the firm opinion that the dignity of the Court and majesty of law deserves to be maintained at all cost. The respondents left no stone unturned to defile the sanctitity and dignity of the court. In the process, valuable time was consumed.

73 It is in the above mentioned circumstances that the only order that can be justifiably passed would be an order under section 439(2) of the Code of Criminal Procedure, 1973, thereby cancelling the bail granted in favour of the respondent No. 1 vide order dated 18/6/2015. However, leniency deserves to be shown to respondent No. 2 being a woman, in view of the submission that she has only followed the dictum of her husband, although she is responsible for the said act.

74 Learned Counsel for the respondents was insisting upon referring to the notes of evidence and has also read out substantive evidence recorded in the trial court. But, it needs to be considered that this is an application seeking cancellation of bail for committing breach of the undertaking given to the Court in person by the

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respondents and therefore, this Court cannot traverse beyond the order that is sought to be recalled.

75 At one stage, learned Counsel had also submitted that an excess amount has been paid to the applicant and therefore, nothing survives in the matter. However, the question before the Court is whether there is breach of the undertaking given to the Court coupled with willful misconduct by the respondents. The willful misconduct of the respondent is writ large on the face of the record which is set out in detail in the earlier paras.

76 In the case of Noorali Babul Thanewala v/s. K.M. M. Shetty

& ors. repported in AIR 1990 SC 464. The Hon'ble Supreme Court has held that -

> "Breach of an injuction or breach of any undertaking given to a Court by a person in civil proceedings on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt."

77 The conduct of the respondents amounts to abuse of process of the court and disregard for the process of justice. Question for determination was whether after giving an undertaking to the Court, there is willful disobedience to the undertaking by taking somersault and contending that the undertaking was given before the Court and an memorandum of understanding was signed under coercion, which contention is raised for the first time after 2

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and half years of giving the undertaking, and more particularly, when the terms of said MOU were acted upon.

78 In the case of Subrata Roy Sahara v/s. Union of India reported on (2014) 8 Supreme Court Cases 470, the Hon'ble Apex Court had observed thus :

> "It is most unbefitting for an advocate to imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favorable orders. ..... No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the dues course of administration of justice. .. benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs."

79 In Criminal Application No. 5273 of 2018 this Court (Coram : Prakash D. Naik, J) by an order dated 17/10/2018 while considering an application filed by the applicant therein for setting aside the order passed by the Revisional Court(Sessions Court) thereby setting aside the order of the Sessions Court held that -

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> "The learned Magistrate while cancelling the bail has not only taken into consideration that consent terms were flouted but also the fact that respondent no.2 had committed breach of conditions while granting bail. The condition to deposit was not imposed by Court but the respondent no.2 had volunteered to make payment. The conduct of accused depicts that sole intention was to seek bail on the basis of false assurance and mislead the Court."

In the present case, although memorandum of understanding was signed, when the accused was in custody, accused had signed the memorandum of understanding. In all probabilities, Superintendent had permitted the applicants(respondents) to sign memorandum of understanding after considering the terms and conditions. Even thereafter, on the civil side as well as on the criminal side, the respondents personally appeared before their court voluntarily (although the Court had not summoned them) and volunteered to abide by the terms and conditions. Hence, an undertaking was given to the court.

80 In Interim Application No. 1 of 2019 in Bail Application No. 1648 of 2019, this Court (Coram : S.K. Shinde, J) cancelled th bail of the Applicant therein granted vide order dated 16/9/2019 after observing as follows :

> "5. On 18th October, 2019 applicant had tendered an Affidavit-cum-Undertaking whereby he agreed and undertook to pay the balance in installments. The Undertaking was

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> accepted by this Court in the following terms.
>
> "the applicant has also undertaken that installment of Rs.1.5 crores due on 31st October, 2019 will be paid by her to the complainant on /or before 18 th November, 2019. She has further in para-5 stated that, in the event, she is unable to comply with para-3(b) and 3(c) and para-4, her bail application shall suo-moto be cancelled."

Thus, in view of breach of undertaking, earlier order dated 16/9/2019 is recalled.

81 In the order dated 1/4/2016 the applicant/complainant had stated that the default is not only the breach of undertaking, but the suppression of facts before the High Court while obtaining consent decree, which would hold the accused liable. On that very day the respondents had appeared and filed an affidavit before this court. They were present before the Court and submitted a chart and schedule of payment to be made to the complainant.

82 The learned Counsel for the respondent No. 2 has after closing the matter for orders mentioned that in view of the evidence recorded on 28/1/2020 that accused has paid to the complainant, excessive amount approximately Rs. One Crore, nothing survives in the matter. The said submission is vehemently opposed by the learned Counsel for the applicant. It is submitted that this is completely an after thought to get relieved from the undertaking. However, that is not the issue which requires consideration.

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issue is resiling from the undertaking. Even after the accused had stated that he had already paid an amount due, this Court could have considered the same. However, instead of that the respondent No.1 was of the opinion that he is not liable to pay any amount. Secondly, criminal case is foisted upon him and thirdly, that he should be relieved from the undertaking.

83 In view of the above observations, the application for cancellation of bail deserves to be allowed in case of respondent No. 1. However, leniency deserves to be shown to respondent No. 2 being a woman and in view of the submission that she has only followed the dictum of her husband, although she is responsible for the said act. Hence, following order is passed :

ORDER

(i) The Criminal Application No. 959 of 2015 is partly allowed and disposed of. The order granting bail to the respondent No. 1 is hereby recalled and the bail granted to the respondent No. 1 is

cancelled. The respondent No. 1 shall surrender before the learned Magistrate seized with the Criminal Case No. 397/PW/2016 on or before 24th February, 2020, failing which the Learned Magistrate shall issue non-bailable warrant against respondent No. 1. The respondent No. 1 be remanded to Judicial Custody. In case, bail application is filed, Learned Magistrate shall decide the same on its own merits and in accordance with law.

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(ii) The bail granted in favour of the respondent No. 2 is hereby confirmed and the application seeking cancellation of bail in that regard is rejected.

(ii) In view of the aforesaid discussions, the applications made by the respondents are rejected and accordingly disposed of.

84 At this stage, learned Counsel for the respondent No. 1 has prayed for staying this order for a period of 8 weeks. Time to surrender is granted till 24/2/2020. In view of this, the prayer stands rejected.

[SMT. SADHANA S. JADHAV, J.] Talwalkar