

Abdul Aleem Abdul Mannan Saudagar vs The State Of Maharashtra And Another on 13 June, 2022

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1018 OF 2022

ABDUL ALEEM ABDUL MANNAN SAUDAGAR
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Joydeep Chatterji
APP fo Respondent No.1-State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. S. S. Kazi

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13-06-2022

ORDER :

1. The present application has been filed under Section 482 of the Code of Criminal Procedure invoking the inherent powers of this court in order to set aside the Judgment and order in Misc. Criminal Application No.04 of 2022, by learned Additional Sessions Judge-2, Nanded, on 07-03-2022, thereby cancelling the bail granted to the applicant in Crime No.240 of 2021, registered with Itwara Police Station, Nanded District Nanded, for the offence punishable under Section 26 (2), 27, 23, 30 (2)(a) 59 of the Food Safety and Standards Act, 2006 as well as offence punishable under Section 328, 272, 273, 188 of the Indian Penal code.

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2. The factual matrix leading to the application are, that the present applicant was added as an accused in Crime No.240 of 2021, registered with Itwara Police Station, Nanded for the above said sections. He had filed Misc. Criminal Bail Application No.779 of 2021 under Section 438 of Cr.P.C. before the Court of Sessions Judge, Nanded. After hearing both sides, the learned Additional Sessions Judge, Nanded allowed the said application by order dated 16-11- 2021 by imposing condition. We are concern with condition No.'B' of Clause 1 which runs thus :-

"The applicant shall not tamper with the prosecution witnesses in any manner either

by influencing them or intimidating them to dissuade from disclosing the facts of the occurrence of the crime before the Court and he shall not indulge in similar crime or any other criminal activity while on bail."

Thereafter, Other Misc. Application No.04 of 2022 was filed by one Sunil s/o Suryakant Satare i.e. respondent No.2, under Section 438 (2) of Cr.P.C. for cancelling the said anticipatory bail granted to the applicant in the said crime on the ground that after the petitioner has been released on bail, he came to be arrested in Crime No.157 of 2021, registered with Pimpaldari, Taluka Gangakhed District Parbhani, which is for the similar sections. It was then contended 3 CriAppln 1018-2022 that the applicant is a habitual offender, and therefore, his bail deserves to be cancelled. After hearing the applicant therein as well as the present applicant, the learned Additional Sessions Judge-2, Nanded who had granted bail to him in Crime No.240 of 2021 held that he has committed breach of the term to the bail, and therefore, cancelled the bail. Hence, this application under Section 482 of Cr.P.C. has been filed.

3. Heard learned Advocate Mr. Joydeep Chatterji for applicant, learned Advocate Mr. S. S. Kazi for respondent No.2, and learned APP Mr. S. P. Deshmukh for respondent No.1-State.

4. Learned Advocate appearing for the applicant has vehemently submitted that the order of cancellation of bail has been passed mechanically by the learned Additional Sessions Judge, Nanded. In fact, in Crime No.240 of 2021 also there was no name of the present applicant and in fact it was filed against one Khaledkhan Arefkhan. The applicant apprehended his arrest on the ground that the said accused had then revealed the name of the petitioner and showed him as involved in the commission of the crime. That means, on the basis of statement of the co-accused, prosecution tried to arrest the applicant, and therefore, the applicant had approached by filing Cri.

4 CriAppln 1018-2022 Bail Application No.779 of 2021 under Section 438 of Cr.P.C. The documents on record in Crime No.157 of 2021 registered with Pimpaldari Police Station, Taluka Gangakhed District Parbhani, would also show that it was against one Mahesh Manohar Balsetwad and the remand report would show that the name of the present applicant was disclosed by co-accused. The applicant was then arrested and thereupon he had filed application under Section 439 of Cr.P.C. for releasing him on bail by filing Cri.Misc.Appln (Bail) No.248 of 2021. The learned Additional Sessions Judge, Gangakhed, District Partbhani, allowed his application on 10-12-2021. The applicant who had filed Other Misc.Cri.Appln.No.04 of 2022 had no locus standi to file application for cancellation of bail and it was not shown by the concerned applicant that there is any iota of evidence against the applicant. The statement of the co-accused cannot be said to be admissible in evidence. Nothing has been recovered from the present applicant. Therefore, the cancellation of bail could not have been done mechanically by holding that there is breach of term of the bail, therefore, the said order deserves to be set aside.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly supported the order passed by the learned 5 CriAppln 1018-2022 Additional Sessions Judge and submitted that when the applicant was involved in another crime that was sufficient to take note of, and therefore, the order of cancellation of bail has been rightly passed. Learned Advocate for respondent

No.2 further submits that since anybody can set the law in motion, the applicant/present respondent No.2 had right to file the said application.

6. At the outset, it appears that in Other Misc.Cri.Appln No.04 of 2022 the applicant therein i.e. present respondent No.2 has quoted a wrong section. It is stated that the said application has been filed under Section 438 (2) of Cr.P.C. Section 438 (2) of Cr.P.C. deals with the conditions to be imposed by High Court or the Court of Sessions when directions under Sub-section 1 while granting anticipatory bail are issued. It does not state about the cancellation of a bail order passed under Section 438 (1) of Cr.P.C. The application would be covered under Section 439 (2) of Cr.P.C. which provides that a High Court or Court of Sessions may direct any person who has been released on bail under this Chapter be arrested and commit him to custody. The learned Additional Sessions Judge has considered the said application under Section 439 (2) of Cr.P.C. The powers under Section 439 (2) of Cr.P.C. can be exercised only in 6 CriAppln 1018-2022 exceptional circumstances. Here, it is to be noted that the reason for cancellation of bail stated by the applicant therein was breach of terms to the bail. Therefore, in order to consider whether that was the sufficient ground to take away liberty granted to the accused should be strictly seen, because by the act of cancellation of bail the concerned Court would be taking away liberty of a person. When the said Court granted anticipatory bail to the applicant in Crime No.240 of 2021 it had given reasons. It was specifically observed while granting bail under Section 438 of Cr.P.C. by the same Court that the facts of the case do not attract offence punishable under Section 328 of IPC and rest of the offences alleged are bailable in nature. When the application for cancellation of that bail was filed, it ought to have been considered whether there is evidence cogent enough to connect the applicant / accused with the said crime. No doubt as on today it stands the present applicant is an accused in subsequently instituted case i.e. Crime No.157 of 2021, registered with Pimpaldari Police Station and it is for the similar offence. But, how his name is involved ought to have been considered by the concerned Court. If we consider the remand report, it can be seen that the name of the present applicant is stated to have been revealed through the statement made by co-accused. Together with 7 CriAppln 1018-2022 this statement after the applicant was arrested nothing was seized by the police. Therefore, except the said statement there was nothing on record before the learned Sessions Judge to be considered for cancellation of bail. Therefore, whatever was before the Court should have been prima facie assessed as to whether it is sufficient to connect the accused with the crime. There is settled principle of law that the statement of the co-accused cannot be made admissible against the co-accused, and therefore, though the applicant is an accused in another case which came to be subsequently instituted, yet there was no such evidence on record by which the learned Additional Sessions Judge could have come to the conclusion that there is breach of term of the condition. Here, the breach of term of the condition contemplates a voluntary breach of term, and therefore, the facts ought to have been considered from that angle. The learned Additional Sessions Judge appears to have mechanically cancelled the order only by taking into consideration the fact that name of the applicant was appearing as an accused in another case and he was released on bail by the different Court.

7. The Hon'ble Supreme Court in Ms. X Vs. State of Telangana 8 CriAppln 1018-2022 and another, (2018 SAR (Criminal) 786) has held that, "it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out". The principles laid down in Daulatram Vs. State of Haryana, (1995) 1 SCC 349) have been reiterated,

those are as follows :-

"Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are:

interfere or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

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8. Further, the observations from Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285) has also been taken, which reads thus :-

""It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

9. This Court in Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315) has observed that :-

10 CriAppln 1018-2022 "When liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner."

Therefore, taking into consideration the principles stated above, the inherent powers of this Court under Section 482 of Cr.P.C. are required to be invoked when the bail granted to the applicant has been cancelled in erroneous way.

10. It appear that while cancelling the bail on the basis of the application by a third person, the learned Additional Sessions Judge committed wrong in holding that anybody can set the law in motion. The applicant i.e. present respondent No.2 is neither informant nor related to investigating agency, he simply says that he is the citizen of India. Only on the basis of his said statement, he does not get an authority to seek cancellation of bail. The very purpose of granting bail to a person is to restore his liberty and a third person who has no concern nor he can be said to be a victim as defined under Section 2 (wa) of the Code of Criminal Procedure will get any authority to file such an application, and therefore, it will have to be again said that the order that has been passed regarding 11 CriAppln 1018-2022 cancellation of the bail of the applicant is mechanical in nature. Hence, following order.

ORDER

1) The application stands allowed and disposed of.

2) The Judgment and order passed in Misc. Criminal Application No.04 of 2022, by learned Additional Sessions Judge, Nanded on 07-03-2022 is hereby set aside. In consequence thereof, the anticipatory bail granted to respondent No.2 by order dated 16-11-2021 in Crime No.240 of 2021, registered with Itwara Police Station, Nanded, passed in Misc.Cri. Bail Appln No.779 of 2021 stands restored together with the bail bonds of the applicant submitted, if any.

(SMT. VIBHA KANKANWADI) JUDGE vjg/-.