



inita

**IN THE HIGH COURT OF BOMBAY AT GOA
SUO MOTU CRIMINAL REVISION NO. 1 OF 2024**

HIGH COURT ON ITS MOTION IN
THE MATTER OF A.B.A. 2 OF 2024 OF
CHILDRENS COURTS AND CRMAM(F) 75
OF 24

.... Petitioners.

Versus

TARZAN PARSEKAR & ANR.

.... Respondents.

Mr S. G. Bhobe, Public Prosecutor for State.
Mr A. V. Pavithran, Advocate under Legal Aid along with Mr P.
Kholkar, Advocate for the respondent no.1.

CORAM:

BHARAT P. DESHPANDE, J

Date :

28th August, 2024

ORAL ORDER.:

1. Heard Mr Bhobe, learned Public Prosecutor for the State and Mr A. V. Pavithran, learned counsel appointed under legal Aid basis for respondent no.1/accused, since efforts were made to serve respondent no.1 who is found not available at the given address and even in the matters pending before the trial Court, non bailable warrants are issued including notices to the sureties inspite of such efforts, respondent no.1 is not appearing before the Court and thus it was directed that accused should be represented by an advocate on the basis of Legal Aid Scheme.

2. Mr Bhobe while pointing out the directions issued by the Apex Court in paragraph 5, would submit that scope of the present petition is to examine legality and propriety of the order passed by the Children Court while deciding anticipatory bail application filed by the respondent/accused which was allowed by order dated 24.1.2024 inspite of knowledge that certain conditions were imposed on him by this Court while granting bail in another matter.

3. Mr Bhobe would submit that respondent violated conditions imposed by this Court and entered North Goa and then committed another offence for which FIR was registered. Respondent then approached learned Children Court by filing an application for anticipatory bail No.2/2024 wherein Investigating Agency filed detailed reply disclosing all relevant facts and the earlier matters wherein respondent is involved. Mr Bhobe further disclosed that the respondent was granted bail by the High Court with certain conditions and he violated such condition for the purpose of committing another crime. Learned Children Court vide its order dated 24.1.2024 granted anticipatory bail to the respondent by putting certain conditions.

4. In the meantime, an application was filed by the State before this Court vide Criminal Misc Application(Main) No. 75/2024/F for cancellation of bail granted to the respondent in connection with FIR No.161/2022 for the offence punishable under Section 307 read with

Section 149 of IPC and Section 25 of the Arms Act. Vide order dated 12.3.2024, this Court cancelled bail granted to the respondent vide earlier order dated 8.8.2024 in Criminal Application (Bail) No. 502 of 2023/F. While passing such order, this Court has also observed that about FIR registered vide crime no.6/2024 and granting of anticipatory bail to the respondent by the learned Children Court dated 24.1.2024.

5. Respondent challenged such order of cancellation of bail by filing a Special Leave Petition (Criminal) before the Apex Court which came up for hearing on 15.5.2024. While dismissing the Special Leave Petition, the Apex Court requested this Court to examine Suo Motu the legality and propriety of the order dated 24.1.2024, passed by the Children Court in Anticipatory Bail Application No.2/2024. Accordingly, a petition was registered and taken up.

6. Mr Bhobe, appearing for the State would submit that respondent was granted bail by this Court with certain condition that he should not enter North Goa. However, respondent by violating such a condition, visited Calangute which is in North Goa and committed further offence for which an FIR was registered. He would submit that all the facts were placed before the learned Children Court in a detailed reply. However, by ignoring such aspects, bail was granted in anticipation of arrest. Mr Bhobe would submit that not only legality and propriety of the impugned order is required to be

examined by this Court on the basis of statement made and the fact that matter was brought to the notice of the learned Children Court about violation of the condition of bail granted by the High Court.

7. Mr Pavithran, learned counsel for the respondent would submit that this matter cannot be considered for the purpose of cancellation of bail since parameters of cancellation are totally different. He submits that there is delay in filing the complaint. He submits that there is no application filed by the State challenging the bail granted to the respondent by the Children Court. He would further submit that the conditions imposed on the respondent by the Children Court were not violated by him.

8. Mr Pavithran submits that the alleged FIR is a false and fabricated story and only to implicate the respondent in another offence. He would submit that in the said FIR, there was no question of any custodial interrogation and accordingly, the learned Children Court considered this aspect and granted the bail. He would then submit that respondent thereafter visited the police station however formalities of bail were not completed. Mr Pavithran would submit that learned Children Court was not apprised of the application filed by the Investigating Agency before this Court for cancellation of bail since there is no such fact disclosed in their reply.

9. Mr Pavithran placed reliance in ***Himanshu Sharma Vs State of Madhya Pradesh***,¹ wherein the Apex Court discussed

1 (2024) 4 SCC 222

about the consideration for cancellation of bail and more particularly in paragraph nos.1 and 2.

10. In order to consider the above submission, it is necessary to look into observation of the Apex Court in the order dated 15.5.2024 which reads as under:-

“UPON hearing the counsel the Court made the following

O R D E R

- 1. Delay condoned.*
- 2. We have heard learned Senior Counsel for the petitioner(s) at a considerable length and carefully perused the material placed on record.*
- 3. No case to interfere with the impugned orders dated 12.03.2024, passed by the High Court of Bombay at Goa, cancelling the bail of the petitioner in Crime No.161/2022, under Sections 143, 147, 148 and 307 read with Section 149 IPC and Section of 25 of the Arms Act at Police Station Anjuna, Goa, is made out.*
- 4. The Special Leave Petitions are, accordingly, dismissed.*
- 5. We request the High Court of Bombay at Goa to suo motu examine the legality and propriety of the order dated 24.01.2024, passed by the Children’s Court for the State of Goa at Panji, in A.B.A.No.02/2024, granting anticipatory bail to the petitioner(s), even after noticing some of the material facts in para 5 of that order.”*

11. Background of passing of such order is the fact that an application for cancellation of bail was filed by Anjuna Police Station before this Court vide Criminal Misc Application(Main) No.75/2024/F. It was the contention of the Investigating Agency that bail granted by this Court in Criminal Misc. Application Bail No.502/2023/F concerning FIR No.161/2023 needs to be cancelled since there are violations of conditions by the respondent after he was enlarged on bail.

12. Vide detailed order dated 12.3.2024, this Court (Coram: Avinash G. Gharote,J) observed that bail granted to the respondent vide order dated 8.8.2023 needs to be cancelled, accordingly order was passed thereby cancelling the bail granted to the respondent on 8.8.2023 and the respondent was directed to surrender before Anjuna Police Station by 17.3.2024.

13. Respondent challenged this order before the Apex Court wherein observations as quoted above are made with direction to this Court to consider the legality and propriety of the order dated 24.1.2024 passed by the learned Children Court.

14. Thus, it is now necessary for this Court to examine the legality and propriety of the order passed by the learned Children Court inspite of knowledge that respondent was involved in around 6 to 7 matters and hence violated bail conditions imposed upon him in earlier orders.

15. This Court also observed in paragraph 6 about the order passed by the Children Court in Crime No.6/2024. Such observation reads thus:-

“.....Though it is true that the Children's Court has granted anticipatory bail to the non-applicant by its order dated 24.01.2024 for the offences under Crime No. 6/2024, however, it cannot be said that this was after due consideration of the terms of bail order dated 08.08.2023, for though the said order records the enlargement of the non-applicant on bail by the order dated 08.08.2023, the only discussion to be found in para 15 thereof, which does not speak anything about the conditions of bail in the order dated 08.08.2023.”

16. Records and proceedings of the anticipatory bail application filed before the Children Court is called and on perusal of it one thing is clear that respondent filed anticipatory bail no.2/2024 in connection with Crime No.6/2024 registered at Anjuna Police Station. Detailed say so filed by the Investigating Agency which reads thus:-

“The above named respondent most respectfully prays and submits as under.

1. It is submitted that, on 06.01.2024 at 15.53 hrs, one person lodged his complaint to the effect that on 04.01.2024 at 18.00 hrs near Dream Circle, Nagoa, Bardez Goa accused Mr. Tarzan Parsekar r/o Nagoa, Bardez Goa assaulted the complainant and his minor son age 09 yrs, thereafter accused Mr. Tarzan Parsekar and Mr. Sagar Patil with their common intention abused the complainant in filthy language and threatened to kill him.

2. In this connection registered Anjuna PS Cr. No. 06/2024 U/s 323,504,506(i1) r/w 34 IPC & Sec. 8 of Goa Children's Act.

3. It is submitted that during the course of investigation visited at the crime spot and drawn detail scene of offence panchanama in presence of two respectable panchas.

4. It is submitted that, the statement of the victim who is the minor son of the complainant has been recorded in presence of NGO VAU.

5. It is submitted that, the applicant accused is a History sheeter to Anjuna Police Station and involved in the following crimes.

Sr.No. Cr. No. & Sec. of law

- 1 Anjuna PS Crime No. 161/2022 U/s 143, 147, 148, 307 r/w 149 IPC & Sec. 25 of Arms Act
- 2 Saligao P.S. Cr. No. 09/2022 U/s 452, 323, 427, 504, 506 (ii), r/w 34 IPC
- 3 Calangute PS Cr No.139/2021 u/s 326 r/w 34 IPC and Sec 7 & 25 of Arms act 1959
- 4 Calangute PS Cr. No. 134/14 u/s 435, 507 r/w 34 IPC
- 5 Mapusa PS Cr. No. 220/2021 u/s 452, 427, 504, 506(ii) r/w 34 IPC
- 6 Anjuna PS Cr. No. 45/2010 w/s 307 1/w 34 IPC
- 7 Anjuna PS Cr. No. 89/2011 u/s 324, r/w 34 IPC
- 8 Anjuna PS Cr. No. 133/2013 u/s 307, 427, 504 r/w 34 IPC

6. It is submitted that, the applicant accused was arrested in Anjuna PS Cr. No. 161/2022 U/s 143, 147, 148, 307 r/w 149 IPC & Sec. 25 of Arms Act on 01.10.2022.

7. It is submitted that, the Hon'ble High Court of Bombay at Goa had granted conditional bail to the applicant accused vide Criminal Misc. Appl. (Bail) No. 502/2023 (filing) wherein one of the condition was "The applicants shall not enter North Goa District during the pendency of the trial except for attending the trial and investigation officer."

8. It is submitted that, the applicant accused had violated the order of the Hon'ble High Court of Bombay at Goa and involved in the present crime.

9. It is submitted that, the applicant accused had given his address before the Hon'be Trial Court and investigation officer in Anjuna P.S. Cr. No. 161/2022 that he will be staying at C/o Akash S/o Prakash Kolvekar, r/o PWD Qtrs. No. 137/1, Nirmalnagar Road, Amona Quepem, Goa.

10. It is submitted that, Mr. Akash S/o Prakash Kolvekar was summoned at this Police Station and enquiry was conducted with him wherein it was revealed that, the applicant accused never stayed at his address after he was released from the Jail in Anjuna PS Cr. No. 161/202.

11. It is submitted that, the applicant accused had involved in the present crime by violating the Bail order of the Hon'ble High Court of Bombay at Goa.

12.It is submitted that the Hon'ble Court into Bail application order 502/2023 has mentioned that "The applicants shall not enter North Goa District during the pendency of the trial except for attending the trial and investigation officer." Inspite of the same applicant accused in the present Bail application had mentioned address as H No. 171, Arraiswaddo, Nagoa, Bardez Goa and he failed to furnish the present address of South Goa District.

13.It is submitted that, the applicant accused is a history Sheeter of Anjuna Police Station and had created terror in the locality by committing the above crime.

14.It is submitted that, the applicant accused is required in Police Custody in order to trace other accused person who is involved in the crime and also to recover the 120 car.

15.It is submitted that, if Anticipatory bail is granted to the applicant accused, he will continued his criminal activities in the locality.

16.It is submitted that, if the applicant accused is released on bail, there is every possibility that he will violate the conditions laid down by the Hon'ble Court as he had earlier violated the order of the Hon'ble High Court of Bombay at Goa.

17.It is submitted that, if Anticipatory Bail is granted to the applicant accused then the life of the complainant and his minor will be in danger.

In view of the above, it is prayed before your Hon'ble Court that, the present Bail Anticipatory Bail application of the applicant accused may please be dismissed."

17. From the above reply and more specifically paragraph nos. 7 and 8, it was brought to the notice of the learned Children Court that though respondent was granted bail by High Court vide Criminal Misc. Application(Bail) no.502/2024/F, condition was imposed on him that he shall not enter North Goa during the pendency of the trial except attending the trial and Investigating Officer. It is further claimed in paragraph 8 that respondent violated such conditions by

committing the present offence. It is also brought to the notice that High Court directed respondent to furnish address to Anjuna police station, such address was found to be incorrect as on inquiry it was found that he was never staying at that place. Paragraph 12 of the reply further shows that the respondent violated conditions imposed on him while granting bail in other matters.

18. Impugned order passed by the Children Court importantly noted all these aspects which is found from paragraph no. 5 onwards. However with the only observation that presence of the applicant in custody is not required and thus granted bail by imposing certain conditions.

19. Mr Bhobe is justified in pointing out that condition no.3 in the impugned order dated 24.1.2024 is contrary to the condition imposed by this Court vide order dated 8.8.2023.

20. The case in which the respondent is allegedly involved is discussed in paragraph no. 5 of the reply which is in case of offence punishable under Section 307 of IPC along with Section 25 of Arms Act. In fact in three separate offences punishable under Section 307 of IPC, the respondent is found involved as alleged.

21. In the case of *Himanshu Sharma* (supra), the Apex Court observed in paragraph 11 as under:-

“11. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely

different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail:

(a) the accused has misused the liberty granted to him;

(b) flouted the conditions of bail order;

(c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;

(d) or that the bail was procured by misrepresentation or fraud.

In the present case, none of these situations existed.”

22. In fact the above decision is clearly supporting the case of the Investigating Agency since it is found mentioned therein that bail granted to an accused can be cancelled if Court is satisfied that after being released on bail accused has misused the liberty granted to him and flouted conditions of the bail order.

23. The contention of Mr Pavithran that there is no allegations against the respondent that he flouted the conditions imposed on him while granting bail by the Children Court. The import of the order of the Apex Court cannot be restricted only to order of the bail granted by one Court when an accused is involved in multiple matters and he is released on bail with certain conditions. Each and every condition of the order of grant of bail is required to be obeyed by the accused till conclusion of the trial of that particular matter. Accused cannot claim that he is not violating the condition of the bail granted

to him but he is free to violate the condition put to him in any other matters. The question is whether the conditions imposed on an accused while granted bail is misused or violated. If such a factor was brought to the notice of the concerned Court, it was necessarily required to be considered for the purpose of grant or refusal of bail in anticipation of arrest of another matter.

24. Mr Pavithran would submit that offence vide FIR No.6/2024 was registered against the respondent by filing a false and fabricated complaint. It is his contention that custodial interrogation of the applicant was not necessary in the said matter. However, though such contention could be one of the ground for grant of bail, it is duty of the concerned Presiding Officer to look into other parameters and the fact which was brought before it by filing reply by the Investigating Agency specifically pointing out that the condition imposed on him while granting bail in any matter stands misused/violated. In such circumstances, granting bail only on the ground that no custodial interrogation is required in FIR No.6/2024 and by ignoring the other factors, was completely improper. Legality of such order as well as propriety could be examined in the present petition as directed by the Apex Court so as to set record right. It is no doubt true that bail is the rule and jail is an exception however, other factors are required to be examined before granting bail. As far as anticipatory bail is concerned, parameters are separate and distinct

from granting of regular bail. Refusal to grant bail could be justified in order to prevent the accused from committing another crime.

25. In the present matter when the factors were brought to the notice of the concerned Presiding Officer that while on bail, he violated the conditions, entered North Goa and committed another offence, would have been considered in appropriate manner.

26. By failing to consider these aspects, learned Children Court committed a serious error in granting anticipatory bail which needs to be interfered with in the present proceedings.

27. Accordingly, and for the reasons disclosed above, order passed by the learned Children Court dated 24.1.2024 in Anticipatory bail application no.2/2024 is hereby quashed and set aside. Application filed by the respondent bearing anticipatory bail application no. 2/2024 is accordingly rejected.

28. Assistance given by Mr A. V. Pavithran on the legal aid basis and at the request of this Court is appreciated.

29. Suo Motu Criminal Revision stands disposed of accordingly.

BHARAT P. DESHPANDE, J