

(2014) 02 BOM CK 0147

Bombay High Court

Case No: Criminal Application No. 50 of 2014

Rubina Zahir Ansari

APPELLANT

Vs

Mr. Sharif Altaf Furniturewala
and Others

RESPONDENT

Date of Decision: Feb. 7, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439(2) 482

Citation: (2014) 2 BomCR(Cri) 628

Hon'ble Judges: A.R. Joshi, J

Bench: Single Bench

Advocate: Rizwan Merchant and Faiz Merchant instructed by Rizwan Merchant and Asso, for the Appellant; Sham Mehta, Suraj Iyer instructed by y M/s. Ganesh and Co. for Respondent No. 1, Mr. Subhash Jha, Ms. Rushita Jain instructed by y Law Global Advocates for Respondent No. 2, Ms. S.V. Sonawane, Assistant Public Prosecutor for the Respondent No. 3, for the Respondent

Final Decision: Dismissed

Judgement

A.R. Joshi, J.

Heard learned counsel for the respondent No. 2 and also heard learned counsel for the petitioner on the preliminary objection raised on behalf of respondent no. 2 as to maintainability of the present application for cancellation of bail before this court. Without going into much detail, facts leading to the filing of the present application for cancellation of bail are as under;

This Court vide order dated 28.12.2013 rejected the bail application No. 2109 of 2013 filed by the present respondent nos. 1 and 2. By detailed order the bail application was rejected by this Court. That time apparently the investigation was continuing and charge-sheet was not then filed. Thereafter, the investigation was over and charge sheet was filed and fresh bail application bearing Nos. 12 and 13 of 2014

were preferred respectively by present respondent nos. 1 and 2. Said applications were preferred before learned 37th Addl. Chief M.M. Court, Esplanade, Mumbai. Said bail applications were allowed vide order dated 1.2.2014 giving directions to release both the said applicants-present respondent nos. 1 and 2 on bail on their executing P.R. bonds in the sum of Rs. 50,000/- each with surety in the like amount. Certain directions were given regarding the attendance before the I.O.

2. Being aggrieved by the grant of said order of bail to respondent Nos. 1 and 2, present application for cancellation of bail is preferred before this Court. In the meantime, when bail order was passed by Additional 37th Court, Esplanade, Mumbai on 1.2.2014, the operation of the said order was stayed for a particular period. Within that time the present application for cancellation of bail was preferred before this Court and the order granting bail was stayed till today. Today the rival arguments are heard as mentioned above mainly on the ground of preliminary issue as to maintainability of present application for cancellation of bail before this Court.

3. The main contention on behalf of respondent no. 2 is that the judicial propriety demands that the application for cancellation of bail is required to be preferred before the Sessions Court in view of the provisions of Section 439 (2) of Cr.P.C. At this juncture, though it was specifically mentioned by the learned counsel for the respondent No. 2 that section 439 sub-section (2) of Cr.P.C. contemplates concurrent jurisdiction in the Sessions Court and also of this Court, still insistence was on the aspect as to judicial propriety.

4. In support of the above submissions, various authorities are cited before the Court.

- (i) [Mohanlal Choudhari Vs. State of Maharashtra,](#)
- (ii) [Shri Padmanabh Keshav Kamat Vs. Shri Anup R. Kantak and others,](#)
- (iii) [Hajialisher Vs. The State of Rajasthan,](#)
- (iv) (1986) GLH 836 Ramchandra Kashiram Vora Vs. State of Gujarat
- (v) [Chhajju Ram Godara and Others Vs. State of Haryana and Another,](#)
- (vi) [K.C. Iyya and etc. Vs. State of Karnataka .](#)
- (vii) [Laxman Irappa Hatti and Suresh Irappa Hatti Vs. The State of Maharashtra,](#)

Even in fact total 21 authorities were cited. Except seven authorities mentioned above, other authorities are not on the issue raised here.

5. At this juncture, it must be mentioned that learned senior counsel for respondent no. 1 has stated that respondent no. 1 is not submitting any arguments on this issue and the said objection is not raised on behalf of respondent no. 1.

6. Counter to the arguments advanced on behalf of respondent no. 2, learned counsel for the petitioner brought attention of this Court to the earlier decision of this Court in Criminal Application No. 1844 of 2011 dated 8th January, 2014. In the said order passed by this Court the same issue has been dealt with extensively, maintaining that when the specific provisions of section 439 of Cr.P.C. give concurrent jurisdiction to both the Forums i.e. the Sessions Court and also the High Court and when there is no bar for the High Court to directly entertain any such application for cancellation of bail, there cannot be any directions by this Court so as not to entertain the application for cancellation of bail directly before this Court and thereby giving directions to the applicant to go before the Sessions Court.

7. Though much is argued on the aspect as to propriety as to filing of such application for cancellation of bail firstly before the Sessions Court, in the considered opinion of this Court, if the law is clear as in the present matter by way of provisions of Section 439 (2) of Cr.P.C. then a party cannot be debarred from redressing its grievance before the High Court. Otherwise also if at all any special circumstances are to be considered so as to entertain such application directly before the High Court, it is argued on behalf of the present applicant that the order passed by Metropolitan Magistrate granting bail to the respondent No. 1 and 2 though initially stayed by the same Court, it could not have been continued by the Sessions Court if the Sessions Court would have been approached for cancellation of bail. By submitting this it is brought to the notice of this Court that the order of granting of stay to the bail could have been passed by the High Court under the inherent jurisdiction under the provisions of section 482 of Cr.P.C. Apparently, this mode would not have been available before the Sessions Court, further argued.

8. In any event, considering the ratios propounded by the authorities cited on behalf of respondent no. 2 and considering that there is no legal bar for the High Court directly to entertain the application for cancellation of bail, in the considered opinion of this Court and more so in view of the earlier order passed by this Court in Application No. 1844 of 2011 dated 8th January, 2014 that the plea of maintainability of the present application for cancellation of bail preferred by the applicant is required to be answered in the affirmative accepting maintainability. Consequently, the objection raised on the maintainability of the present application before this Court shall not sustain and same is accordingly rejected. In this application after hearing arguments on the maintainability issue the above order is passed and the said issue has been answered in the affirmative and now application for cancellation of bail to stand over to 12th Feb 2013 at 3:00 p.m. Interim order to continue till then.