

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

BAIL APPLICATION NO.1277 OF 2018

Irfan s/o Abdul Alim Shaikh
Age : 33 years, Occu : Business,
R/o. Near Matan Market,
Ahmedpur, Dist. Latur

.. Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Ahmedpur Police Station,
Tal. Ahmedpur, Dist. Latur

.. Respondent

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Advocate for Applicant : Shri S.S. Thombre ;
APP for Respondent – State : Shri S.P. Sonpawale.

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CORAM : P.R. BORA, J.

Dated: December 06, 2018

PER COURT :

1. Heard Shri Thombre, learned Counsel appearing for the applicant and Shri Sonpawale, learned APP appearing for the respondent – State.

2. The present applicant is an accused in Sessions Case No.19 of 2017 pending in the Court of Additional Sessions Judge at Ahmedpur. The applicant is being prosecuted for the offences under Sections 366, 376, 506 r.w. 34 of the Indian

Penal Code. The applicant was released on bail in Cri. M.A. (Bail) No.51 of 2016 vide order dated 16.07.2016 passed by Additional Sessions Judge, Ahmedpur. While releasing the applicant on bail, the learned Sessions Judge has imposed condition on the applicant that, he shall leave the jurisdiction of Latur district and shall not enter in Ahmedpur or at any place within District Latur without permission of the said Court.

3. The applicant filed Criminal Application No.5300 of 2017 before this Court and this Court (**Coram: Nitin W. Sambre, J.**) vide order passed on 12.10.2017 modified the conditions imposed upon the applicant by the Sessions Court thereby permitting the applicant to attend the proceedings of the trial.

4. The material on record shows that, the informant filed application for cancellation of bail granted to the applicant bearing Application No.14 of 2018 before this Court and alleged that, despite the condition imposed upon the present applicant not to enter into District of Latur, except to attend the dates in the proceedings against him, he was found residing in the area

of district Latur. It was also the contention of the informant that, though several representations in that regard were made to the police authorities bringing to their notice that, the applicant is committing breach of the condition imposed upon him by the Sessions Court while releasing him on bail, no cognizance was taken of the said representations/complaints.

5. The record further shows that, despite service of the notice in application for cancellation of bail bearing Application No.14 of 2018, the applicant did not cause his appearance before this Court. The record further shows that, this Court (**Coram: Mangesh S. Patil, J.**) vide order passed on 13.06.2018 cancelled the bail granted to the present applicant. The order passed by the High Court was challenged by the present applicant before the Hon'ble Apex Court by filing SLP (Cri.) No.6258 of 2018. The Hon'ble Apex Court did not cause any interference in the order passed by the High Court, however, gave liberty to the present applicant to apply for regular bail after some time.

6. The learned Counsel submitted that, the order was

passed by the Hon'ble Apex Court on 06.08.2018. Waiting for few days thereafter, the applicant filed the application for bail before the Sessions Court on 31.08.2018. Before that, the applicant had surrendered before the Sessions Court on 18.08.2018. The learned Sessions Judge vide order passed on 05.10.2018 rejected the said application. Aggrieved by, the applicant has preferred the present application.

7. The learned Counsel for the applicant submitted that, earlier bail application filed by the present applicant was allowed on merits by the then Sessions Judge and the applicant was released on bail on certain conditions. The learned Counsel further submitted that, it is the firm stand of the present applicant that, he did not breach any of the said condition, however, only because he did not remain present before this Court and consequently could not put forth his submissions before this Court, the order came to be passed by this Court cancelling the bail of the present applicant.

8. The learned Counsel further submitted that, though

the Hon'ble Apex Court has not interfered in the order passed by this Court, liberty was given to the present applicant to approach the Sessions Court seeking his release on bail. The learned Counsel pointed out that, the learned Sessions Court while passing the subsequent order dated 05.10.2018 has unnecessarily indulged into the merit of the allegations against the present applicant which were already considered by the earlier Court while granting bail to the present applicant. The learned Counsel submitted that, influenced by the order passed by this Court cancelling the bail of the applicant, the Sessions Court has rejected his subsequent bail application. The learned Counsel submitted that, there were different considerations for this Court to cancel the bail. In the circumstances, the learned Counsel has prayed for granting the bail to the present applicant. It is contended that, the applicant will abide by every condition, which may be imposed by this Court in the event of his release on bail.

9. Learned APP Shri Sonpawale has opposed for granting the bail stating that, the contentions as are raised by the applicant were already considered by this Court while

canceling the bail of the present applicant vide order passed on 13.06.2018 and the said order has been upheld by the Hon'ble Apex Court. The learned APP inviting my attention to the observations made by the learned Sessions Court while rejecting the application submitted that a well reasoned order has been passed and in such circumstances, no interference is required in the said order and no case is made out by the applicant for his release on bail.

10. I have duly considered the submissions made by Shri Thombre, learned Counsel appearing for the applicant and Shri Sonpawale, learned APP appearing for the State. I have perused the orders passed in the matter. It is not in dispute that, initially the Sessions Court itself had extended bail to the present applicant by imposing certain conditions on him and application was thereafter filed before this Court for cancellation of bail alleging that, the conditions were violated by the present applicant.

11. It *prima facie* appears to me that, the allegations as about breach of bail conditions though were made by the

complainant, there was no adjudication on the complaints so made. There is no material on record showing that, on the application received, the police authorities have carried out some inquiry and in the said inquiry, the complaint made by the informant was found to be genuine or having substance in it. It further appears to me that, when it was the contention of the original informant that, the applicant was continuously violating the terms and conditions imposed upon him, no material is produced on record showing that any such complaint was made by the original informant either before the committing Court or before the Sessions Court.

12. Even if it is accepted that the grievance raised by the informant was genuine, in view of the fact that, the applicant has now undertaken to remain away from the jurisdiction of District Latur, except on the dates in the Sessions trial against him, it appears to me that, the request of the applicant deserves to be positively considered. When once the applicant was held entitled for bail on merits, now merely because some allegations were made that he violated the terms and conditions, which have not been enquired into and further that, the applicant did

not remain present before the High Court in the proceedings filed against him for cancellation of bail, the applicant cannot be refused the relief for which he was held entitled earlier. I am, therefore, inclined to allow the present application. Hence the following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on furnishing P.R. Bond in the amount of Rs.50,000/- with one or more sureties in the like amount, in Crime No.189/2016 registered at Ahmedpur Police Station, Dist. Latur.
- (iii) The applicant shall not enter into the area of District Latur, except on the dates of Sessions trial against him.
- (iv) The applicant shall provide particulars as about his residence along with the landline phone number / mobile number, if any, to the Police Station Officer, Ahmedpur and also to inform any change, if occurs, in his place of residence in advance.
- (v) The applicant shall attend nearest police station where he will be residing in the relevant period once in a week i.e. on every Sunday during the period between 10:00 A.M. to

02:00 P.M. till decision of the trial against him.

(vi) The applicant shall not in any way try to pressurize the prosecution witnesses or to establish any sort of contact with any of the prosecution witness. In the event of any such complaint received against the present applicant, his bail shall liable to be cancelled.

(vii) Bail before the Sessions Court.

(P.R. BORA, J.)

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