

(2017) 12 BOM CK 0104
In the Bombay High Court
Case No : 34 of 2017

Court on its own motion

APPELLANT

Vs

Karuna Hareshwarrao Shirbhate & anr

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Sections 439](#), [Sections 439](#) -
[Indian Penal Code, 1860](#), [Section 120B](#)/
[Section 120B](#), [Section 120B](#)

Citation : (2017) 12 BOM CK 0104

Hon'ble Judges : S. B. Shukre

Bench : SINGLE BENCH

Advocate : B. M. Lonare, P. V. Navlani

Judgement

1. The two accused Karuna Hareshwarrao Shirbhate and Akash Hareshwarrao Shirbhate in Crime No. 356/2016 registered against them and others at Police Station, Kotwali , Amravati face the present proceedings initiated by this Court on its own motion. The proceedings are for cancellation of bail granted to them.

2. It is so happened that the other Bench of this Court was hearing a bail application of the coaccused Ravindra S/o Deorao Gandre filed under Sections 439 of the Criminal Procedure Code, when it noticed that the two accused i.e. Karuna Shirbhate and Akash Shirbhate against whom these proceedings are suo motu started by the Court were granted bail by the Sessions Court on 24th August, 2016 and by this Court on 20th April, 2017 respectively without examining the matter from the angle of involvement of officials/employees of the bank in the present crime. The crime registered against these two accused as well as the coaccused Ravindra, Crime No. 356/2016 registered at Police Station Kotwali, Amravati, is for the offences punishable under Sections 406, 420, 465, 467, 471 and 120B read with Section 34 of the Indian Penal Code and it is registered on the basis of the complaint lodged by Andhra Bank, Amravati. The basic allegation of the complainant - bank against all these accused is that they

got sanctioned loan from Andhra Bank for the purpose of starting Printing Press by indulging in fraudulent tactics and submitting forged documents. While granting bail to both the said accused - Karuna and Akash, the respondents here, issue of involvement of any employee of the bank was not present as neither the complainant - bank nor anybody else had then made any allegation against any of the bank officials for his being a party to the fraud perpetrated by the said two accused persons and coaccused Ravindra. Even the Investigating Officer, at that point of time, did not consider this possibility while investigating the case.

3. Hence, from the view point of finding out involvement of any bank official in commission of the aforesaid offences, it was during the course of hearing of the application of the coaccused Ravindra (Criminal Application (BA) No. 977/2016), that the other Bench of this Court felt the need for directing the investigation into this aspect of the matter so as to ascertain the role of the bank officials in the whole case. Accordingly, this Court by order passed on 5th June, 2017 issued three directions one for leading the investigation into an inquiry about the involvement of the bank officials in the Crime or otherwise, second for conducting a discreet inquiry against the Investigating Officer to find out as to why the Investigating Officer did not conduct investigation by suspecting involvement of the officials or employees of the Bank in the crime and the third of issuing notice to the present two accused, Karuna and Akash, to show cause as to why the prearrest bail granted to them should not be canceled.

4. Here, we are concerned with the third direction as the notice issued to these two accused persons has been duly received by them and they are now before this Court ready with their submissions.

5. Accordingly, I have heard Shri Navlani, learned counsel for two accused and Shri Lonare, Additional Public Prosecutor to the State. He has filed reply of the State to this application. It is taken on record.

6. On going through the reply, I find that the Investigating Officer is now seeking appropriate order from the Court and not any order regarding cancellation of bail or detaining of these two accused in jail at the behest of Economic Offence Wing for a longer period of time. The Investigating Officer of the Economic Offence Wing is also present. When asked, if custody of these two accused would be required or not, he replied that accused Akash Shirbhate was in custody in another crime and during that period of time, he completed the investigation in the present crime as against Karuna Shirbhate and Akash Shirbhate and so their custody in the present crime would not be required. He has also informed, which is particularly stated in the reply as well, that the Branch Manager who submitted a false report about existence of the Printing Press and showed that he paid a visit to the place where socalled Printing Press was in existence in a false manner has been placed under arrest and investigation against him as well is about to be completed. It is further informed that Branch Manager is in jail custody. The chargesheet against all these accused, as informed by the Investigating Officer, would be filed within a period of one month, though it could be earlier than that,

depending upon the receipt of the original papers which are relevant in the matter, from the zonal office of the concerned bank.

7. The above referred facts would indicate that there is no justification for cancellation of the bail already granted to both the accused persons. It is also nobody's case that bail has been granted to these two accused by ignoring the wellsettled principles of law or any specific prohibition imposed by law. It is well known that it is easier to grant bail than cancel it, once granted (See State (Delhi Administration) Vs. Sanjay Gandhi, AIR 1978 SC 961). It is also well settled that parameters which apply to exercise of discretion to grant bail are different from those applicable to exercise of discretion at a later stage regarding cancellation of the bail already granted (See Dolat Ram Vs State of Haryana, (1995) 1 SCC 349). Later parameters are much stricter than those applicable to grant of bail. It is only when the bail was granted against wellsettled principles of law or prohibition of law or when the Investigating Officer requires custody of the accused for investigating into new revelation of inculpatory facts not present when the bail was granted or when the accused enlarged on bail is indulging in something which is prejudicial to the interest of the prosecution or when the accused released on bail tampers with prosecution witnesses or evidence or when there is reasonable apprehension newly developed after grant of bail to the accused that he has made preparation for not making himself available to the Court of justice or is likely to evade the course of justice, then only the bail granted by the Court could be canceled. A useful reference in this regard may be made to the cases of (i) Gurucharan Singh & others Vs. State (Delhi Administration), (1978) 1 SCC 118 and (ii) Kanwar Singh Meena Vs. State of Rajasthan & anr. (2012) 12 SCC 180. The facts discussed earlier, obviously do not meet any of these parameters.

8. Shri Navlani, learned counsel for the said accused has invited my attention to the law laid down by the Hon'ble Apex Court in the case of Vikramjit Singh Vs. State of M.P., AIR 1992 SC 474 where, the Hon'ble Apex Court has held that cancellation of bail by coordinate bench of same Court on new or the additional ground is not justified specially when earlier order of grant of bail had become final, with its not being appealed against. It is further held in this case in paragraph 3 that no Bench can comment on the functioning of a Coordinate Bench of the same Court, much less, sit in judgment as an Appellate Court over its decision.

9. Firstly, I must say, this is not a case where the coordinate bench has canceled the bail granted by another Bench. As regards the law relating to making of comments on the functioning of Coordinate Bench or sitting in appeal by another Bench, I do not think that the law would be applicable to the present case for the simple reason that no comments whatsoever have been made by the other Bench while issuing suomotu notice for cancellation of bail to the two accused persons and so question of sitting in appeal does not arise. On the contrary, it appears, while passing the order on 05.06.2017, the other Bench of this Court

looked quite concerned about the manner in which the investigation was being conducted at that time, by the concerned Investigating Officer and these concerns, can now also be said to be justified because after this order, the investigation in this case came to be transferred to Economic Offence Wing of Amravati Police and after taking over of the investigation by the Wing that new facts constituting commission of offences by even more persons have been discovered. As a sequel to it, the Branch Manager of the Andhra Bank has now been arrested. This investigation has also found, *prima facie*, an unholy nexus between bank officials and unscrupulous borrowers. Now, with the investigation sailing on its proper course and is likely to be concluded very soon, the order passed by another Bench on 5th June, 2017, I would say, has resulted in bringing to the fore something good, which would go a long way in serving the interests of the society in future.

10. In the result, I am of the view that now there is no need to cancel the bail already granted to the said accused and the *suomotu* proceedings deserve to be closed. The proceedings stand closed.