
(1994) 04 BOM CK 0009

In the Bombay High Court

Case No : Criminal Revision Application No. 94 of 1994

Premchand Pratapmal Surana

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 439(2)
Penal Code, 1860 (IPC) — Section 420, 468, 477

Citation : (1995) 1 BomCR 72

Hon'ble Judges : S.S. Dani, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; V.B. Ghatge, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Dani, J.—The applicant before this Court challenges the order dated 5-4-1994 of the Additional Sessions Judge, Aurangabad, in Criminal Revision No. 103 of 1994 setting aside the orders of the 2nd Judicial Magistrate, First Class, Aurangabad, dated 28-3-1994 granting Magisterial Custody Remand and subsequently the order of bail.

2. Few facts which are relevant for the disposal of this revision may be stated thus :

One Manohar Kshirsagar lodged a complaint with Kranti Chowk police station, Aurangabad on 27th March, 1994 alleging offences punishable under sections 420, 468, 471 and 477A read with 34, Indian Penal Code against the applicant-accused. It is alleged that the accused is the proprietor of Vinod Enterprises, from whom the complainant purchased a television set on instalments by paying Rs. 2,700/- in cash out of total price of 9,370/-. It is alleged that his signatures were secured on some papers by the accused at the time of this transaction on 21st December, 1988. On 21st February, 1994 the complainant received a notice from Housing Finance Corporation informing that a loan of Rs. 1,00,000/- was advanced to him and out of it, Rs. 32,331.90 were outstanding till December,

1993. By the said notice the complainant was directed to pay the remaining amount within a week. It is alleged that the complainant had never become a member of any housing society nor took any loan for construction of house and on making enquiries he found the present accused having registered a housing society by showing the names of bogus members and the documents executed by the complainant and other persons at the time of purchase of television sets in instalments were misused by the accused. It is on these allegations that the complainant Kshirsagar filed the above complaint on the basis of which the aforesaid offences were registered at C.R. No. I-131 of 1994.

3. The accused came to be arrested in connection with those offences at 7.00 a.m. on 28-3-1994 and the investigating machinery sought police custody remand for a week. The 2nd Judicial Magistrate, First Class, Aurangabad, by an order dated 28-3-1994, however, granted M.C. remand for a fortnight and refused to grant P.C. remand. On behalf of the accused bail petition was also moved to the said Court on the same day and the concerned Magistrate vide order dated 28-3-1994 ordered the accused to be released on bail on executing personal bond of Rs. 3,000/- with surety of the like amount and on further condition to give attendance to the concerned police station daily between 5 to 6 p.m.

4. The State then approached the Sessions Court in Criminal Revision No. 103/94 against the said order of rejection of P.C. remand, granting of M.C. remand as well as granting of bail. By an order dated 6-4-1994 the Additional Sessions Judge, Aurangabad allowed the petition and the impugned orders were set aside and the accused was remanded to police custody. It is against this order of the Additional Sessions Judge, Aurangabad that the accused has approached this Court in the present revision.

5. It is submitted by Shri Bora, learned Counsel for the applicant-accused that, the revision petition before the Additional Sessions Judge was itself barred because of the specific provisions of section 397(2), Criminal Procedure Code, it being against an interlocutory order. It is further submitted that there is neither any evidence nor circumstances for cancellation of bail and as such the impugned order of the Sessions Court cannot be upheld u/s 439(2), Cr. P.C. It is on these two grounds that the revision petition is being pressed.

6. Shri Ghatge, learned Additional Public Prosecutor, however, submitted that the revision to the Sessions Court was not against an interlocutory order as it related mainly against the refusal of the P.C. remand of the accused.

7. So far as the first ground in respect of maintainability of the revision before the Sessions Court is concerned, the powers of revision conferred by sub-section (1) of section 397, Cr. P.C., are not to be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial on other proceeding. It is therefore to be considered as to whether the impugned order dated 28-3-1994 directing the accused to be released on bail can be said to be of interlocutory

nature so as to make the revision before the Sessions Court unmaintainable u/s 397(2), Cr. P.C.

8. It has been observed by the Supreme Court in the case of Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, thus :

"It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time.... There is no finality attached to an order of a Designated Court granting or refusing bail. Such application for bail can always be renewed from time to time. That being so, the contention advanced on behalf of the Government that the impugned orders refusing to grant bail were not interlocutory and therefore appealable cannot be accepted."

9. Relying on the above decision, this Court in the case of Mohan alias Mannu Basantani v. State of Maharashtra, 1989 Mah. L.R. 1556 ruled as follows :

"The order granting or refusing bail is an interlocutory order and in view of sub-section (2) of section 397 the revisional powers could not be exercised in respect of such interlocutory order."

10. Similarly, this Court in the case of The State of Maharashtra v. Namdeo Raoji and others, (1991)1 Mah. L.R. 379, held that orders of bail are essentially interlocutory orders and the revision is barred u/s 397(2) of the Cr. P.C. The above decisions support the contentions that order granting or refusing bail is an interlocutory one and the reason is that the application for grant of bail can be renewed from time to time.

11. Coming to the facts involved in the case at hand, it may be reiterated that by an order dated 28-3-1994, the accused was ordered to be released on P.R. of Rs. 3,000/- with surety of the like amount and on further condition of giving daily attendance to the concerned police station. It may also be noted that that State did not approach either the Magistrate or the Sessions Court for cancellation of bail and admittedly the State challenged the order of bail in a revision u/s 397(1) of Cr. P.C. In view of this, the Criminal Revision No. 103/94 before the Sessions Court has to be held as unmaintainable, it being against an interlocutory order and as such, prohibited by section 397(2), Cr. P.C.

12. It is submitted by Shri Bora, learned Counsel for the applicant that the impugned order of the Sessions Court in cancelling the bail and directing the accused to be remanded to the police custody cannot be supported u/s 439(2), Criminal Procedure Code, 1973 . u/s 439(2), a High Court or Court of Session has a power to direct that any person released on bail be arrested and committed to custody. The various guide-lines for cancellation of bail u/s 439(2), Cr. P. C., have been enumerated by the Supreme court in several cases. It has been held and viewed that for cancellation of a bail there must be cogent and overwhelming evidence by the prosecution and the Court has to come to a conclusion that the accused is interfering with the course of justice by tampering

with the witnesses. It is further observed by the Supreme Court that there must be supervening circumstances so as to order cancellation of earlier bail. The Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, observed thus :

"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only, if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."

13. Similarly in the case of Bhagirathsinh Judeja Vs. State of Gujarat, the Supreme Court observed thus :

"Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail.... The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case, there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

14. Relying on the above cases this Court in the case of The State of Maharashtra v. Namdeo Raoji and others, (1991)1 Mah. L.R. 379 ruled that the fact that the accused are charged with an offence of murder would not justify of passing of an order of cancellation of bail which has already been passed, without there being any supervening circumstances which would justify such a cancellation. In the said case, in the absence of any allegations regarding subsequent events which would disentitle the accused from continuing on bail and the allegations regarding tampering of evidence or likelihood of the accused absconding, it was ultimately held that it was not a fit case for interference with the order in the revisional jurisdiction u/s 397(1) or section 439(2), Cr. P.C. Similarly this Court in the case of The State of Maharashtra Vs. Kriti V. Ambani and another, observed that for cancellation of bail already granted the prosecution must lead cogent and overwhelming evidence and the Court must exercise the power with due care and circumspection and the Court must come to a clear conclusion that the accused is interfering with the course of justice by tampering with the witnesses by abusing the liberty to suborn the witnesses and the order of cancellation is permitted only by reason of supervening circumstances.

15. Keeping in mind the above guide-lines and the observations it is required to be considered in the present case as to whether any supervening circumstances

are led by the prosecution for cancellation of bail already granted to the accused. Further if it cannot be said that the presence of an accused cannot be secured for further investigation except by cancellation of bail and if it is failed to establish that the accused is tampering with the investigation, bail, already granted, in the absence of any such thing, cannot be cancelled.

16. It is not disputed in the present case that the accused was arrested on 28-3-1994 at 7.00 a.m. and even though the police custody remand was sought for, the Magistrate granted M.C. remand for 15 days. It is also not disputed that on the same day a bail petition was filed and after hearing both the sides the same Magistrate granted the bail to the accused on executing P.R. of Rs. 3,000 with surety of the like amount and imposed condition of daily attendance to the concerned police station between 5 to 6 p.m. It is pertinent to note that the State did not even allege any supervening circumstance to justify cancellation. Further, there are no allegations of any specific event which would disentitle the accused for continuing the bail. It is also important to note that the State does not even allege the non compliance of the conditions of daily attendance to the concerned police station by the accused. It may be noted at this juncture that before the Sessions Court the only grievance of the State was difficulty in collecting the record. In view of the fact that the accused is directed to attend the police station daily, the collection and seizure of the concerned record cannot be held to be impossible or impracticable. The bail in the case was granted on 28-3-1994 and the State moved the Sessions Court on 30-3-1994 in revision which came to be ultimately decided on 5-4-1994. It is not alleged by the State either before the Sessions Court or even before this Court that the accused is tampering with the witnesses or is likely to abscond. It is not, therefore, the case of the State that if the bail is allowed to be continued, the accused would not be available either for investigation or trial. In other words, neither any supervening circumstance nor any subsequent event nor the likelihood of absconding and the non availability of the accused for investigation and trial is alleged by the State for seeking the cancellation of bail.

17. It may also be noted that admittedly the alleged offences are punishable under sections 420, 468, 471 and 477A, I.P.C. and, as observed above, even in the case of an offence of murder punishable u/s 302, I.P.C., that such contentions were required to be alleged and proved by the State before a resort to section 439(2), Cr. P.C. was held by the Court for cancellation of bail already granted. In view of this, there is no case of interference with the order of bail in exercise of the revisional jurisdiction u/s 397(1) or section 439(2), Cr. P.C. As such, the impugned order dated 5-4-1994 in Criminal Revision No. 103/94 of the Additional Sessions Judge, Aurangabad deserves to be quashed and that of the Magistrate restored.

18. In the result, this Criminal Revision Application No. 94 of 1994 succeeds. The impugned order in Criminal Revision No. 103 of 1994 dated 5-4-1994 of the Additional Sessions Judge, Aurangabad stands quashed and set aside and the

order dated 28-3-1994 of the 2nd Judicial Magistrate, First Class, Aurangabad granting bail to the accused on P.R. of Rs. 3,000/- with surety of the like amount and on condition to attend the Kranti Chowk police station daily between 5 to 6 p.m. is restored. Rule made absolute accordingly.

Rule made absolute.