

(2011) 11 BOM CK 0067

In the Bombay High Court

Case No : Criminal Application No. 501 of 2011

Salim Khan Saheb Khan and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(5), 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2012) BomCR(Cri) 704

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.V. Sirpurkar, for the Appellant; P.V. Bhoyar, APP for Respondent and Mr J.B. Kasat Advocate to Assist the Prosecution, for the Respondent

Judgement

A.P. Bhangale, J.—Admit. Heard forthwith with the consent of the learned counsel for respective parties.

2. The applicants pray for to quash and set aside the order dated 29/07/2011 passed by the learned J. M F C Court no 2, Chandur Bazaar u/s 437(5) of the Criminal Procedure Code, 1973, in Crime No. 35 of 2011 whereby the bail granted earlier in favour of the applicants was cancelled. The court considered the application for cancellation on the ground that there was complaint as to violation of the bail order as they were not to enter village Kharpi till the filing of the chargesheet by the Shirasgaon Police in the case. The court found the ground pleaded by the complainant as doubtful and without merits. But on the ground that the offence appeared serious punishable with imprisonment for life, the court decided to cancel the bail. The applicants prayed, in the alternative, for the order of anticipatory bail.

3. Heard submissions at the Bar. The facts appear as under :

FIR No. 35 of 2011 was lodged on 02/07/2011 at Shirasgaon Police Station in District Amravati by first informant Sheikh Sattar Sheikh Karim u/s 324, 147,

148, 149 of the IPC against applicants on the ground that they had raised quarrel over the boundary of the agricultural field and the access road and assaulted first informant, and family members by means of axe, iron pipe, and sticks. Learned JMFC, Chandur Bazaar was pleased to grant conditional bail in favour of the applicants upon execution of bond in the sum of Rs 15000/and furnishing a solvent surety by each of them and a conditions were added that they will not enter Kharpi village till the filing of the chargesheet in the case and shall not tamper with evidence. Warning was given that if they enter in the Kharpi village till the charge sheet is filed, their bail shall be cancelled. After recording supplementary statement and perusal of the C.T. Scan, medical document and certificate as to the nature of the injury caused to head of the first informant, on 19/07 2011 section 307 IPC was introduced in the accusations made earlier. Police sought to arrest the accused again for investigation and prayed for to cancel the bail granted earlier. The first informant applied for cancellation of the bail on the ground that the offence is serious, punishable with life imprisonment and alleged that the accused have managed the police to register simple offence u/s 324 of the IPC instead of u/s 307 of IPC and further on the ground that the accused gave threat to kill complainant and his relatives. However the first informant failed to substantiate the grounds pleaded by him. Heavy reliance is placed for the applicants upon the ruling of the Supreme Court in Dolat Ram and Others Vs. State of Haryana, in which it is held as under:

4. Rejection of bail in a nonailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

This decision is also referred to in the recent ruling in Hazari Lal Das vs. State of W.B. reported in AIR 2010 SC 91.

4. Considering the aforesaid decisions of the Hon''ble Supreme Court, it is more than clear that the considerations which are required to be taken into account at the stage of consideration of a bail application and those which are required to be examined at the time of consideration of an application for cancellation of bail, are drastically different. Once bail is granted, there is need for very cogent and overwhelming circumstances to upset the order of bail. The Supreme Court has

broadly indicated that the grounds for cancellation of bail could possibly be where there is an attempt to interfere with the due course of administration of justice, or where there is an abuse of the concession granted to the accused, or where new material comes on record to necessitate the cancellation of the Bail, or where bail was earlier granted on the basis of suppression of facts and or misrepresentation / misstatement. It is also clear from the Supreme Court decisions that a Court of concurrent jurisdiction ought not to interfere with an order of bail already granted, inasmuch as such interference would amount to the subsequent court virtually functioning as a Court of appeal / revision in respect of the earlier court, which is not permissible. It is only in exceptional circumstances, as indicated by the Supreme Court above, that a Court of concurrent jurisdiction can interfere with an order of bail already granted. Cancellation of bail necessary involves the review of a decision already made and can 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. However, bail granted illegally or improperly by a wrong, arbitrary exercise of judicial discretion can be cancelled even if there is absence of supervening circumstances. If there is no material to prove that the accused abused his freedom court may not cancel the bail.

5. In the present case, it would be pertinent to note that there was alteration in the penal provision as section 307 was invoked later instead of Section 324 of the I.P. C. but no city scan report was produced of alleged injury. The police did not ask for P.C.R. but had asked for M.C.R. of the applicants which was granted, weapon of offence was already seized on the date of arrest of the applicants. Plain reading of the provisions of section 482 Cr.P. Code would show that nothing in the Code (which includes section 397(2)) shall be deemed to limit or affect the inherent power of the High Court. However, the real question is when and at what point of time as well as under which circumstances the same is required to be exercised. There is no quarrel that inherent power can be exercised in case of abuse of process of the courts, when there is a failure of justice or there is a grave miscarriage of justice, irrespective of the fact where it relates to an order which may be interlocutory in nature. At the same time, it is equally well settled that inherent power of the High Court can ordinarily be exercised when there is no express provision in the Code for redressal of grievance, but if there is equally effective and alternate remedy available and there is an express provision barring a particular remedy, the High Court should not resort to exercise of inherent power.

6. In my opinion in the present case mere alteration/addition of the aggravated penal provision was not by itself a sufficient, overwhelming ground to cancel the bail already granted particularly when the investigating officer did not specifically pressed for the police custody remand of the applicants for further investigation even after adding aggravated penal provision u/s 307 of the IPC. The impugned order of cancellation of the bail granted earlier to the applicants is therefore unsustainable and indefensible. No one shall be deprived of his personal liberty,

which is most sacrosanct, on the bald premise. This is a proper case to interfere by exercising inherent power to secure the ends of justice.

7. The impugned orders of cancellation of the bail are therefore quashed and set aside. Upon surrender to the custody of the trial court and upon application for grant of bail, let the applicants be released on bail upon furnishing the personal bond in the sum of Rs 25,000/with two or more solvent sureties to the satisfaction of the trial Court, to be provided in the equal sum by each of them. Provided further that

i) They shall attend the trial on each date of hearing and shall not tamper with the evidence in any manner.

ii) They shall not commit any crime while on Bail.

Application disposed of accordingly.