
(1999) 03 BOM CK 0011

In the Bombay High Court

Case No : Criminal Rev. Application No's. 182, 185, 122 and 129 of 1998 &
Criminal Revision Application No's. 182, 185, 122 and 129 of 1998

State of Maharashtra

APPELLANT

Vs

Sanjay Moreshwar Damle and others

RESPONDENT

Date of Decision : 04-03-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(1), 397(2), 438, 439(2)

Penal Code, 1860 (IPC) — Section 34, 406, 420, 468

Citation : (1999) 2 ALD(Cri) 755 : (2000) 5 BomCR 877 : (1999) CriLJ 3806 :
(1999) 3 MhLj 881

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : A.S. Mardikar, Special in Cri. Rev. appln. Nos. 182 and 185 of 1998 and R. B. Pendharkar in Cri. Rev. appln. Nos. 122 and 129 of 1998, for the Appellant; J. P. Pendsey For non-applicant No. 1, R. B. Pendharkar For non-applicants Nos. 2 and 3 in Cri. Rev. Appln. Nos. 182 of 1998, J. P. Pendsey For non-applicants Nos. 1 and 2, R. B. Pendharkar For non-applicants Nos. 3 and 4 in Cri. Rev. Appln. Nos. 185 of 1998, A. S. Mardikar, Special Counsel For non-applicant No. 1 in Cri. Rev. Appln. Nos. 122 and 129 of 1998, J. P. Pendsey For non-applicant No. 2 in Cri. Rev. Appln. No. 122 of 1998 and J. P. Pendsey For non-applicants Nos. 2 and 3 in Cri. Rev. Appln. No. 129 of 1998, for the Respondent

Judgement

D.D. Sinha, J.—Rule, made returnable forthwith by consent of parties.

2. All the above referred criminal revision applications are directed against the same impugned order dated 13-8-1998 passed by IVth Additional Sessions Judge, Nagpur whereby non-applicants/accused S. M. Damle, D. A. Gadgil and Surin Usgaonkar came to be released on anticipatory bail in Crime No. 245/1998 under sections 406, 420 and 468 read with section 34 of Indian Penal Code and, therefore, all these matters are disposed of by this common judgment.

3. The State of Maharashtra as well as complainant Dakshindas challenged the

legality and propriety of the impugned order dated 13-8-1998 on the ground that the learned Additional Sessions Judge granted anticipatory bail to the accused persons because the dispute between the parties is of civil nature. According to Shri Mardikar, learned Counsel for the State, and Shri Pendharkar, learned Counsel for the complainant, the very approach of the learned Additional Sessions Judge is not proper. According to the learned Counsel, the dispute is not at all of civil nature and accused persons have committed offences under the above referred provisions of law and hence, discretion exercised by the learned Additional Sessions Judge u/s 438 of the Code of Criminal Procedure in favour of accused is absolutely erroneous. The impugned order also came to be challenged on the ground that learned Additional Sessions Judge ought to have given due regard to nature of allegations and gravity of offences so also the aspect of custodial interrogation and failure to consider these aspects by the learned Additional Sessions Judge resulted in wrong exercise of discretion u/s 438 of the Code of Criminal Procedure.

4. It is further contended by the learned Counsel that Additional Sessions Judge has given undue weightage to the fact that accused D. A. Gadgil is Managing Director and accused Surin Usgaonkar and S. A. Damle are Vice-Chairman and Manager respectively of the Company and they are busy persons and shall be available to the Police whenever required by the Investigating Officer. According to the learned Counsel, these are not the relevant considerations for exercising discretion u/s 438 of Code of Criminal Procedure, which has resulted in miscarriage of justice. The learned Counsel further contended that the impugned order suffers from patent illegality since the same is based on irrelevant considerations, which are not germane to exercise of discretion u/s 438 of Code of Criminal Procedure.

5. During pendency of the above referred criminal revision applications in this Court, the State filed Criminal Application No. 232/1999 in Criminal Revision Application No. 182/1998 for leave to amend the criminal revision application. Similarly another Criminal Application bearing No. 233/1999 was also filed by the State in Criminal Revision Application No. 185/1998 for grant of leave to amend the said revision. The amendment sought by the State is to permit the State to add sections 482 and 439(2) of the Code of Criminal Procedure to the cause title of criminal revision applications. In short, State is also seeking to invoke inherent powers u/s 482 and cancellation of bail u/s 439(2) of the Code of Criminal procedure. The amendment is allowed.

6. So far as revisions of complainant are concerned, the complainants also sought permission to amend the revisions, which was granted by this Court on 5-10-1998 and accordingly, complainant has added section 439(2) of the Code of Criminal Procedure and Article 227 of the Constitution in the cause title of Criminal Revision Application Nos. 122/1998 and 129/1998.

7. It is contended by the learned Counsel for the State and complainant that since the impugned order of grant of anticipatory bail is based on non-existing

facts and irrelevant considerations, which are not germane to exercise of discretion u/s 438 of Code of Criminal Procedure, it could not be treated as an interlocutory order and, therefore, revisions against such order u/s 397 of Code of Criminal Procedure are maintainable. In order to support the contention, reliance has been placed by the learned Counsel on the judgment of this Court in Prashani Kumar, Assistant Collector of Customs and Central Excise vs. Mancharlal Bhagatram Bhatia and others. 1987 Mh.L.J. 1026.

8. The learned Counsel for the State and complainant further contended that inherent powers of this Court u/s 482 of Code of Criminal Procedure are independent and can be exercised to prevent abuse of process of any Court as well as to secure ends of justice. It is contended that this Court while exercising inherent powers, on its own can consider validity and propriety of the impugned order and in order to secure ends of justice, can interfere. Similarly, it is contended that Article 227 of the Constitution provides that every High Court shall have superintendence over all the Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and, therefore, any order passed by the subordinate Court, which is legally not sustainable, can also be interfered with by this Court under Article 227 of the Constitution. In order to support the contentions, reliance is placed on the judgments in Mr. M.D. Kale, Intelligence Officer, N.C.B. Bombay Vs. Mr. Mohd. Afzal Mohd. Yarkhan and another, , Chandrakant Chandulal Bhansali vs. Shrikant Shrikrishna Joshi and another, 1992 Mh.L.J. 1475 and Krishnan and another vs. Krishnaveni and another, 1997(1) Mh.L.J. 509.

9. It is also contended by Shri Mardikar and Shri Pendharkar, learned Counsel that section 439(2) of Code of Criminal Procedure is also invoked by way of amendment because after the accused persons came to be released on anticipatory bail, they have not made themselves available for interrogation in spite of various reminders sent to them and also tampered with the documentary evidence, which came to the notice of prosecution as well as complainant and these are the new circumstances, which have emerged after the impugned order of bail came to be passed, which warrant cancellation of bail. The State as well as complainant have annexed various documents along with their respective revisions for the purpose of showing alleged tampering being done by the accused persons and how liberty has been misused by them.

10. Shri Pendsey, learned Counsel for the accused, raised a preliminary objection. The learned Counsel contended that the revisions against the order of grant of bail are not maintainable since the impugned order is an interlocutory order and in view of section 397(2) of the Code of Criminal Procedure, revisional powers could not be exercised in respect of such interlocutory order. It is also contended that since there is an express provision for cancellation of bail u/s 439(2) of the Code of Criminal Procedure, inherent powers u/s 482 of the Code of Criminal Procedure so also powers under Article 227 of the Constitution cannot be resorted to. It is also contended that even u/s 439(2), State as well as

complainants are required to approach the same Court, which has granted bail, for cancellation of the same. In order to substantiate the contentions, the learned Counsel placed reliance on the judgments reported in Mohan alias Mannu Radhamal Basantani vs. State of Maharashtra, 1989 Mh.L.J. 613 and Gurcharan Singh and others vs. State (Delhi Administration), AIR 1978 SC 179.

11. Since preliminary objection is raised by Shri Pendsey, learned Counsel for the non-applicants/accused, about maintainability of the above referred revisions, it will be proper for me to consider this issue at this stage itself. The first question, which falls for my consideration, is whether revisions are maintainable against the order of Additional Sessions Judge granting bail to the accused notwithstanding provisions of section 397(2) of the Code of Criminal Procedure? This controversy is completely covered by the judgment of the Apex Court in Amar Nath and Others Vs. State of Haryana and Another, . The Apex Court in para (6) of its judgment observed thus :

"Let us now proceed to interpret the provisions of section 397 against the historical background of these facts. Sub-section (2) of section 397 of the 1973 Code may be extracted thus :

"The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in section 397(1) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie u/s 397(2) of the 1973 Code.

(Emphasis supplied)

It will be proper at this stage to consider provisions of section 397(2) of the Code, which operate as a bar in exercise of revisional power in relation to any interlocutory order. In the case of Amar Nath and others vs. State of Haryana and others, the Apex Court has clearly held that "passing order for bail" is an interlocutory order and, therefore, there can hardly be any controversy in this regard. The impugned order dated 13-8-1998 is undoubtedly an order of grant of bail and, therefore, falls within the ambit and category of interlocutory order and in view of bar created by section 397(2) of the Code, the High Court is precluded from exercising its revisional powers in this regard, which ultimately results in rendering revision against such interlocutory order not maintainable. I must, therefore, uphold the preliminary objection raised by Shri Pendsey, learned Counsel for the non-applicants and further hold that all the above referred four revisions filed by the State as well as complainant are not maintainable against the impugned order of grant of bail, dated 13-8-1998.

12. The contention raised by Shri Pendharkar is that the impugned order is based on non-existing and irrelevant considerations and, therefore, it cannot be said to be an order in the eye of law and consequently, it cannot be treated as an interlocutory order and, therefore, revision would lie against such an order and bail could be cancelled. The learned Counsel also placed reliance on the judgment of this Court in Prashant Kumar, Assistant Collector of Customs and Central Excise vs. Mancharlal Bhagatram Bhatia and others, 1987 Mh.L.J. 1026. In the first place, the contention raised by the learned Counsel goes against the ratio laid down by the Apex Court in the above referred judgment and, therefore, same must fail. Secondly, the judgment of this Court relied upon by the learned Counsel in order to support his contention, in my opinion, does not offer much assistance since the facts and circumstances were entirely different in the said case. In the said case of Prashant Kumar, this Court has held that the order impugned therein was not supported by any reasons whatsoever and was passed unjustifiably. Therefore, this Court has further held that such order could be interfered with in the revisional jurisdiction. However, in the instant case, I have perused the impugned order dated 13-8-1998 passed by the Additional Sessions Judge as well as material placed by the prosecution before the trial Court in order to oppose bail. The learned Additional Sessions Judge has taken into consideration various facts and circumstances and same is not passed only on the grounds alleged by learned Counsel Shri Mardikar and Shri Pendharkar. It is no doubt true that there are some passing observations in the impugned order, such as dispute appears to be civil in nature, report was lodged for early recovery of amount and accused persons are Chairman, Vice-Chairman and Manager of the Company and are busy persons. However, that by itself does not render the impugned order non-existent or no order in the eye of law. On the basis of averments in the revisions as well as material placed by the prosecution before the Court below, there are certain circumstances, which have emerged for consideration :

(i) Non-applicant Shri Gadgil is Managing Director,. Shri Usgaonkar is Vice-President and Shri Damle is Zonal Manager of M/s Shriram Investment Services Ltd., having office at Bombay,

(ii) There were certain business transactions between the complainant Bank and Company of the accused.

(iii) The complainant Bank has issued two cheques of Rs. 50 lacs each to be invested in M/s Shriram Investment Services Ltd. as a short term deposit for a period of 90 days,

(iv) Accused have acknowledged the amount of Rs. 1 crore. However, according to them, the said amount was invested by the complainant Bank in redeemable preference shares as well as Shriram Mutual Fund for a period of one year,

(v) There was a meeting held at Bombay, which was attended by non-applicants Gadgil, Usgaonker as well as Damle from the accused side and Dr. (Mrs.) S. S. Sonarkar, Mrs. Rai and Shri Dakshindas (complainant) from the Bank side. In that meeting, Shri Gadgil presented xerox copies of the application forms allegedly signed by complainant Dakshindas, General Manager of the Bank and according to non-applicants, these forms were forwarded by the Bank duly signed by the General Manager of the Bank and accordingly amount of Rs. 50 lacs each was deposited in the redeemable preference shares as well as Shriram Mutual Fund respectively,

(vi) Complainant Shri Dakshindas, General Manager of the Bank, denied having signed these forms as well as rubber stamps affixed on the forms and came to the conclusion that these are forged documents,

(vii) Complainant Shri Dakshindas lodged a report in Ambazari Police Station against the applicants on 26-5-1998.

(viii) The Bank has not produced any fixed deposit receipt in respect of deposits made by the Bank in the accused Company in order to show that investments were made only for 90 days.

13. In view of the above referred facts and circumstances involved in the instant case, it appears that dispute is not in respect of amount of Rs. 1 crore being paid by the Bank and received by the Company. It is only in respect of mode of investment. According to the Bank, it was for a period of ninety days and according to the Company, it was for the period of one year and was meant to be invested in the above referred deposit scheme. It is no doubt true that if the Company has forged signature and affixed the stamp of the Bank and created necessary documents, i.e. forms, it is a criminal offence. However, looking to the facts and circumstances involved in the present case, I do not think that the impugned order can be said to be based on non-existing facts and irrelevant considerations and, therefore, impugned order of grant of bail cannot be termed as no order in the eye of law. Order of grant and refusal of bail is a discretionary order and discretion is required to be exercised judiciously and after taking into

consideration the relevant facts and circumstances. For the reasons stated above, it is difficult for me to accept the contention raised by the learned Counsel for the State as well as complainant that the impugned order cannot be said to be an order in the eye of law and, therefore, revision would lie against the said order. Even otherwise, impugned order of grant of bail undoubtedly is an interlocutory order and in view of bar created by section 397(2) of the Code, the revisions are not maintainable against such order.

14. It is difficult for me to appreciate as to how the ratio laid down in the judgment of this Court in Mr. M.D. Kale, Intelligence Officer, N.C.B. Bombay Vs. Mr. Mohd. Afzal Mohd. Yarkhan and another, can support the contention of the complainant. In the said case, the accused had taken a plea that the criminal revision application is not maintainable as remedy for cancellation of bail is not by way of revision, but by filing application u/s 439(2) of the Code. The application was made u/s 439(2) read with section 482 of the Code and also under Article 227 of the Constitution. In that context, my brother had held :-

"Once the application has been filed u/s 439(2) of the Criminal Procedure Code, mere mention of section 482 of the Criminal Procedure Code and Article 227 of the Constitution would not change the nature of the application."

In the said case, this Court was faced with a different situation and, therefore, the ratio laid down in the said case may not have any positive bearing on the controversy involved in the present case.

Similarly, in another judgment in Chandrakant Chandulal Bhansali vs. Shrikant Shrikrishna Joshi and another reported in 1992 Mh.L.J. 1475 and relied upon by the learned Counsel for the complainant, this Court has held -

"in situation where passing of an anticipatory bail order is untimely and where it should interfere with the investigating Authority's right of having a fair and reasonable opportunity to investigate into the guilt or otherwise of the accused has been encroached upon and in particular, in instances where the grounds on which the bail order has been granted, are unjustifiable, interference with that order is certainly necessary."

There is no quarrel regarding ratio laid down by this Court in the above referred judgment. However, everything ultimately will depend upon facts and circumstances involved in each case as well as appropriate procedure relating to cancellation of bail u/s 439(2) of the Code.

The Apex Court in Krishnan and another vs. Krishnaveni and another reported in 1997(1) Mh.L.J. 509. Particularly in para 10, has observed that since revision u/s 397(1) of the Code is barred in view of section 397(2) of the Code, exercising power u/s 482 of the Code would amount to circumventing the provisions of section 397(2) of the Code and is not allowed. I really fail to understand as to how this ratio laid down by the Apex Court would support the contention of the complainant. On the other hand, it clearly supports the reasoning adopted by me

in disposing of these revisions.

15. Let us now consider the scope of inherent power of this Court u/s 482 of the Code and the circumstances in which it can be exercised. It is true that inherent power of the High Court is not conferred by the Code, but High Court already has in it, which is merely preserved by the Code. Plain reading of the provisions of section 482 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 what 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 whether 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. For the purpose of making above referred observations in regard to scope of section 482 of the Code, reliance is placed on the ratio laid down by the Apex Court in its judgment reported in *Amar Nath and Others Vs. State of Haryana and Another*, . Similar view was taken by the Apex Court in *Madhu Limaye Vs. The State of Maharashtra*, .

16. Now coming to the instant case, admittedly there is an alternate as well as effective remedy available to the State, which is also specifically provided under the Code, i.e. cancellation of bail u/s 439(2) of the Code. The Apex Court while dealing with similar question in respect of section 439(2) of the Code, concluded the controversy in this regard and laid down the law and procedure to be followed by the aggrieved party while invoking provisions of section 439(2) of the Code for cancellation of bail. The Apex Court in para 16 of its judgment in *Gurcharan Singh and others vs. State (Delhi Administration)*, AIR 1978 SC 179 has observed -

".... If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court u/s 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court."

(emphasis supplied).

The procedure laid down by the above referred judgment clearly shows that the aggrieved party can move for cancellation of bail granted by the Court of Sessions u/s 439 (2) of the Code on the same facts and circumstances as existed at the time of passing of the order of bail as well as on the basis of new circumstances such as breach of condition, tampering of evidence, misuse of liberty, etc. However, the forums, the aggrieved party will have to approach, will be different depending on the basis on which the cancellation of bail is sought. If cancellation is sought on the same facts and circumstances, then State will have to move the High Court and if it is on the basis of new facts and circumstances, then State will have to move the same Court, which has granted bail.

17. While considering the facts and circumstances involved in the present case in the light of the ratio laid down by the above referred judgment of the Apex Court, it is clear that the State as well as complainant are seeking cancellation of bail granted to the accused on the ground that the impugned order dated 13-8-1998 is based on non-existing and irrelevant considerations, which are not germane to exercise of discretion u/s 438 of the Code, which means validity of the impugned order is called in question on the circumstances existed at the time of passing of the order. However, for the reasons stated in the earlier part of the judgment, I have already rejected the contention of the State as well as complainant in this regard while dealing with preliminary objection in respect of maintainability of the revisions. Cancellation of bail of the accused is also sought on the ground that the accused have misused the liberty granted to them by tampering the documentary evidence. The accused have not made themselves available for interrogation as and when called and, therefore, committed breach of conditions, etc. The State and complainant have annexed various documents along with their respective revisions to show the alleged tampering done by the accused, which means that the State as well as complainant are seeking cancellation of bail on the basis of new circumstances arisen after grant of bail. As per the ratio laid down and procedure prescribed by the Apex Court in *Gurcharan Singh and others vs. State Delhi Administration*, AIR 1978 SC 179, the Sessions Court would be the competent Court to consider and decide the application u/s 439(2) of the Code in such situation where cancellation is sought on the basis of new circumstances arisen after grant of bail. The procedure prescribed by the Apex Court is based on judicial propriety rather than jurisdictional competency. It is not that High Court is not competent to consider the application u/s 439(2) of the Code even on the basis of new circumstances. However, the proper course would be to approach the Sessions Court in such situation, as prescribed by the Apex Court. I, therefore, do not express my opinion on merits in this regard at this stage and it is open to the Sessions Judge to decide the same in case the State as well as complainant file an application u/s 439(2) of the Code for cancellation of bail of the accused and the Sessions Court would be competent to dispose of the same on its own merits.

18. Shri Pendharkar, learned Counsel for the complainant, contended that High Court even under Article 227 of the Constitution can exercise its power of

superintendence for quashing the impugned order of grant of bail since it is based on non-existing and irrelevant considerations. It is true that under Article 227 of the Constitution, this Court enjoys power of superintendence over all the Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power under Article 227 is exercised by the High Court in its discretion and cannot be claimed as of right by any party. This power can be exercised by the High Court in case of grave dereliction of duty or flagrant violation of law and would be exercised most sparingly. Similarly it is equally true that High Court can refuse to exercise discretion under Article 227 on the ground of speedy and effective alternate remedy being available, though rule of alternative remedy is only a consideration for exercise of discretion and does not exclude the jurisdiction of the High Court in exceptional cases. Section 439(2) of the Code provides appropriate, speedy as well as effective remedy for cancellation of bail and is normally required to be resorted to by the State in such situation and, therefore, High Court normally in such situation should refuse to exercise its discretion under Article 227 of the Constitution and allow competent criminal Courts to deal with it. In the instant case, there is nothing extra-ordinary or exceptional, which requires exercise of discretion under Article 227 of the Constitution by this Court. The State as well as complainant both have already invoked power u/s 439(2) of the Code and for the reasons stated above, are also competent to move similar application before Sessions Court, which is competent to decide such application. Therefore, I see no exceptional or extra-ordinary situation to exercise power under Article 227 of the Constitution.

19. For the reasons stated above, this is not the case where inherent power u/s 482 of the Code and power under Article 227 of the Constitution can be exercised. All the four revisions against the interlocutory order dated 13-8-1998 are dismissed as not maintainable. The State as well as complainant are at liberty to move the Sessions Court for cancellation of bail u/s 439(2) of the Code on the basis of new circumstances arisen after grant of bail.