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RIZWAN AKBAR HUSSAIN SYYED

v

MEHMOOD HUSSAIN AND ANR.

MAY 18, 2007

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[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

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Bail—Cancellation of bail—Held: Not to be done in routine manner—On facts, no observation in impugned order cancelling bail that appellant violated specific conditions imposed on him while granting bail—Matter remanded to High Court to consider afresh application for cancellation of bail—Code of Criminal Procedure, 1973—S.438.

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Appellant was arrested for commission of certain offences. He filed bail application. CMM directed his release on bail on furnishing surety for Rs. 10,000/-. Appellant was served through an official of the V.P. Road Police Station a notice relating to an application for cancellation of bail which was registered as Criminal Application before the High Court. According to the appellant, he was present on the date fixed for hearing, that is, 24th April, 2006. His case was listed as item No. 52 in Court Room No. 9 and by about 5.00 p.m. only 30 matters had been heard. On enquiry from an official of the court, he was told that his matter may be listed next week and, therefore, he left the court premises at about 5.15 p.m. On 25th April, 2006, the impugned order has been passed. In fact, believing the statement of the court official, appellant, had engaged a counsel who made enquiries in the Registry on 28th April, 2006 and was told that bail was cancelled by order dated 25th April, 2006.

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In appeal to this Court, appellant contended that the High Court has not indicated any reason for cancellation of bail. No condition was stipulated by the trial court while granting bail. Single Judge has observed that the appellant has violated the conditions imposed and has threatened the complainant after he was released on bail.

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Partly allowing the appeal, the Court

HELD: The High Court seems to have taken exception for non-appearance of the appellant at the time of hearing of the application for cancellation of

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bail. The reason for non-appearance has been explained by the appellant. It is true that in the order granting bail. There was no specific stipulation of any condition. In fact, in the petition for cancellation of bail, the respondent No. 1 has stated that while granting bail, no conditions were imposed. In that sense, the appellant is right that the High Court has erroneously observed that the conditions for grant of bail were violated. There was no specific condition imposed and, that was one of the grievances of the respondent No.1. But even if no condition is specifically stipulated, the accused, while on bail, is not supposed to tamper with evidence. There is no specific observation in this regard in the impugned order. Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made. These circumstances are illustrative and not exhaustive. The Court considering the application for cancellation of bail has to take note of all relevant aspects. In the circumstances of the case, it is proper to remand the matter to the High Court for fresh consideration of the application for the cancellation of bail.

[Para 8] [249-F-H; 250-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 768 of 2007.

From the Final Judgment and Order dated 25.04.2006 of the High Court of Judicature at Bombay in CrI. Application No. 780 of 2006.

Abhishth Kumar and Vibhakar Mishra for the Appellant.

Shivaji M. Jadhav for the Respondents.

R.K. Adsure for the State.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Bombay High Court cancelling the bail granted to the appellant, by exercising power under Section 439(2) of the Code of Criminal Procedure, 1973 (for short the 'Code').

3. The facts as projected by the appellant in a nutshell are as follows:

A 4. On 4th February, 2006 First Information Report was lodged by the respondent No.1 alleging that he and his friend named Girish Shetty, were attacked by the appellant and some other unidentified persons, resulting in injuries. The appellant was arrested on 4th February, 2006. He filed an application for grant of bail. By order dated 10th February, 2006 learned Additional Chief Metropolitan Magistrate 4th Court, Girgaum, Mumbai, directed

B release of the appellant on bail on his furnishing a surety for a sum of Rs.10,000/-. According to the appellant, respondent No.1 was not happy with the grant of bail and wanted to scare the appellant and, therefore, on various occasions threatened him. The appellant had lodged report with the police and on 21st February, 2006, his complaint was registered as N.C. complaint.

C Again on 4th April, 2006, the appellant was threatened by respondent No.1. Subsequently, on 19th April, 2006, appellant was served through an official of the V.P. Road Police Station a notice relating to an application for cancellation of bail which was registered as Criminal Application No.780/2006 before the Bombay High Court. According to the appellant, he was present on the date fixed for hearing, that is, 24th April, 2006. His case was listed as item No.52

D in Court Room No.9 and by about 5.00 p.m. only 30 matters had been heard. On enquiry from an official of the court, he was told that his matter may be listed next week and, therefore, he left the court premises at about 5.15 p.m. On 25th April, 2006, the impugned order has been passed. In fact, believing the statement of the court official, appellant, had engaged a counsel who

E made enquiries in the Registry on 28th April, 2006 and was told that bail was cancelled by order dated 25th April, 2006.

5. In support of the appeal. learned counsel for the appellant submitted that this is a case involving alleged commission of offence punishable under Section 324 of the Indian Penal Code, 1860 (in short the 'IPC'). The case of

F respondent No.1 appears to be that the case ought to have been registered under Section 307 IPC. Even if conceding for sake of arguments that it is so, considering the nature of injuries allegedly suffered by respondent No.1 and his friend, there was no reason to refuse bail. Hence the court had rightly granted bail. In any event, the learned Single Judge has not indicated any reason for cancellation of bail. No condition was stipulated by the trial court

G while granting bail. Surprisingly, learned Single Judge has observed that the appellant has violated the conditions imposed and has threatened the complainant after he was released on bail. The facts point to the contrary. In fact, the appellant has lodged complaint before the police about the threats

H given by respondent No.1.

6. In response, learned counsel for the State of Maharashtra and the complainant submitted that though it was not so specifically spelt out in the order granting bail, it is inherent in every grant of bail that there shall not be any misuse thereof. Since the appellant threatened respondent No.1, therefore, the cancellation of bail is in order. A

7. The order of learned Single Judge, so far as relevant, reads as follows: B

“3. It is submitted though an offence punishable under Section 307 was clearly made out, the V.P. Road Police Station registered the offence under Section 324 read with Section 34 of the I.P.C. It is alleged that after Respondent No.1 was released on bail, thereafter he was started threatening the Applicant and has informed him that if he does not withdraw the complaint, he will have to face dire consequences. Two N.C. complaints have been filed by the present Applicant after the Respondent No.1 was released on bail. C

4. Notice was issued and permission was given to serve the respondent through V.P. Road Police Station. D

5. Learned A.P.P. on instructions from the office who is present in the Court submitted that Respondent No.1 was served on 19th April, 2006 and his signature was obtained on the writ which was issued by this Court. Yet, none appears on behalf of Respondent No. 1. With the result, there is no other option but to cancel the bail which was granted by the trial Court since he has not complied with the conditions which are imposed by the Court and has threatened the Complainant after he was released on bail.” E

8. Learned Single Judge seems to have taken exception for non-appearance of the appellant at the time of hearing of the application for cancellation of bail. The reason for non-appearance has been explained by the appellant. It is true that in the order granting bail, there was no specific stipulation of any condition. In fact, in the petition for cancellation of bail, the respondent No.1 has stated that while granting bail, no conditions were imposed. In that sense, the appellant is right that the High Court has erroneously observed that the conditions for grant of bail were violated. There was no specific condition imposed and, that was one of the grievances of the respondent No.1. But learned counsel for the respondents rightly submitted that even if no condition is specifically stipulated, the accused, while on bail, is not supposed to tamper with evidence. There is no specific F
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A observation in this regard in the impugned order. Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made. These circumstances are illustrative and not exhaustive. The Court considering the application for cancellation of bail has to take note of all relevant aspects.

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9. In the circumstances of the case, we deem it proper to remand the matter to the High Court for fresh consideration of the application for cancellation of bail. To avoid unnecessary delay, let the parties appear before the concerned court on 14th June, 2007. Learned Chief Justice of the High Court is requested to direct listing of the case before an appropriate Court.

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10. The interim order dated 12th May, 2006 passed by this Court shall continue to be operative till the matter is disposed of afresh by the High Court. It is made clear that by giving this direction, it shall not be construed as if we have expressed any opinion on the merits of the case.

11. Accordingly, the impugned order is set aside and the appeal is allowed to the aforesaid extent.

D.G.

Appeal partly allowed.