GULABRAO BABURAO DEOKAR
v.
STATE OF MAHARASHTRA & ORS.
(Criminal Appeal No. 2113 of 2013)

DECEMBER 17, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Bail – Cancellation of – Propriety – Economic offences – Defalcation of public money resulting into huge loss to the City Municipal Corporation – Number of accused including the appellant – Offence alleged punishable with imprisonment for life – Appellant granted bail by the Sessions Judge u/s.439(1) CrPC – High Court, however, allowed application filed by respondent Nos.2 to 4 u/ss.439(2) and 482 CrPC and cancelled the bail granted to the appellant – On appeal, held: Order passed by the Sessions Court was an order passed in breach of the mandatory requirement of the proviso to s.439(1) CrPC – The Sessions Court did not grant proper and full opportunity to the prosecutor to point out as to why bail should not be granted to the appellant – Order passed by the Sessions Court was perverse since none of the factors pointed out by the prosecutor were considered by it – When the prosecutor had pointed out to the Sessions Court that the role of the appellant was no less than that of the three other accused whose bail had been rejected, the Sessions Court ought to have considered these circumstances, justifying custodial interrogation, with due diligence – High Court is empowered u/s.439(2) CrPC to set aside an unjustified, illegal or perverse order granting bail – On facts, the order passed by the High Court recorded cogent and overwhelming circumstances justifying cancellation of bail – Besides, as attempts were made by the appellant to pressurize the witnesses and even the investigating officer, the order of the High Court cancelling the bail cannot be faulted on that

A *ground also – However, trial of this nature, for that matter every trial, ought to be conducted in a free and fearless atmosphere – Trial of the Sessions case in question accordingly transferred to the adjoining district in the peculiar facts and circumstances of the case – Code of Criminal Procedure,*
B *1973 – ss.439 and 482 – Penal Code, 1860 – ss.120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 r/w s.34 – Prevention of Corruption Act, 1988 – s.13(2) r/w s.13(1)(c) and 13(1)(d).*

The appellant (alongwith 56 others) was charged for offences under Sections 120-B, 406, 409, 411, 420, 465,
C **466, 468, 471, 109 read with Section 34 IPC, and under Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The charge-sheet was essentially about defalcation of public money resulting into a huge loss of over Rs.169.60 crores to the**
D **Jalgaon Municipal Corporation in Maharashtra. It was *inter alia* alleged against the appellant that the Jalgaon Municipal Corporation had illegally given more than 30 contracts to the Construction Company belonging to the appellant as a beneficiary in the conspiracy. Accused no.**
E **31 to 50 including the appellant were granted bail by the Sessions Judge under Section 439(1) CrPC. The High Court, however, by the impugned order allowed the application filed by respondent Nos.2 to 4 under Section 439 (2) and 482 of CrPC and cancelled the bail granted**
F **to appellant.**

The question which arose for consideration in the present appeal was whether the High Court erred in cancelling the bail granted to the appellant.

G **Dismissing the appeal, the Court**

HELD:1.1. In the instant case, the Sessions Court had not complied with the mandatory proviso to Section 439(1) CrPC which lays down that before granting bail to
H **a person who is accused of an offence which is**

punishable with imprisonment for life (as in the case of appellant), and which is exclusively triable by the Court of Sessions, it shall give a notice of the application for bail to the public prosecutor. In the instant case, the appellant appeared before the Sessions Judge, when his application for bail was taken up for consideration. The Sessions Judge passed an order 'I.O. to say' but the matter was taken up there and then. The notice under the proviso under the Section 439 (1) implies a proper and full opportunity to the prosecutor to point out as to why bail should not be granted. The initial chargesheet in the instant case was itself running into more than 268 pages. The Sessions Judge ought to have granted adequate time to the prosecutor to reply on the basis of this chargesheet, for him to pass a considered order. Consequently the order of bail does not reflect upon the contents of the charge sheet. [Para 23] [1199-G-H; 1200-A-D]

1.2. As pointed out by the Investigating Officer [Deputy S.P., Jalgaon] in his affidavit that although the matter was heard there and then, the prosecutor did make a detailed argument pointing ought the prima facie case against the appellant. The past conduct of the appellant after the registration of the present crime was also pointed out in detail as well as his criminal antecedents with proof, and also the fact that the bail applications of 3 of the main accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The order passed by the Trial Court was thus a perverse order since none of these factors were considered by the Court. [Para 24] [1200-E-G]

1.3. The prosecutor applied for remand of at least 2 days which was declined. Obviously the prosecutor

A required time to interrogate the accused, and the custodial interrogation in such a situation, for at least two days, could not have been denied. It could have aided the investigation by unearthing relevant information. The bail order was however passed on the same day, there and then. Though the liberty of a citizen even if he is an B accused is undoubtedly important, but at the same time when the prosecutor had pointed out to the Court that the role of the appellant was no less than that of the three others whose bail had been rejected, the Judge ought to have considered these circumstances, justifying C custodial interrogation, with due diligence. [Paras 23, 25] [1200-C; 1201-A-D]

1.4. The order passed by the Sessions Judge was an order passed in breach of the mandatory requirement of D the proviso to Section 439(1) of Cr.P.C. It is also an order ignoring the material on record, and therefore without any justification and perverse. The High Court does have the power under Section 439 (2) of Cr.P.C. to set aside an unjustified, illegal or perverse order granting bail. This is E an independent ground for cancellation as against the ground of accused mis-conducting himself. [Para 26] [1201-D-F]

1.5. In the instant case, the attempts made by the appellant to pressurize the witnesses and even the F investigating officer are clearly placed on record through the affidavit of the Deputy S.P. (the Investigating Officer). On that ground also it could be said that the appellant will be pressurizing the witnesses if he is not restrained. This being the position, one cannot find any fault with the G order of the High Court cancelling the bail on that ground also. The order does record the cogent and overwhelming circumstances justifying cancellation of bail. The nature and seriousness of an economic offence and its impact on the society are always important

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considerations in such a case, and they must squarely be dealt with by the Court while passing an order on bail applications. [Para 27] [1201-F-H; 1202-A]

1.6. The objection raised by the appellant that respondent Nos. 2 to 4 had no locus to file an application seeking cancellation of bail, cannot be sustained. Respondent nos. 2 to 4 had invoked the inherent jurisdiction of the High Court under Section 482 CrPC, and the High Court has power to entertain such application. [Paras 28, 29 and 30] [1202-B, H; 1203-B]

Puran vs. Rambilas and another 2001 (6) SCC 338: 2001 (3) SCR 432 – relied on.

Dolat Ram vs. State of Haryana 1995 (1) SCC 349: 1994 (6) Suppl. SCR 69; *Bhagirathsinh vs. State of Gujarat* 1984 (1) SCC 284: 1984 (1) SCR 839; *Fida Hussain Bohra vs. State of Maharashtra* 2009 (5) SCC 150: 2009 (3) SCR 998; *Siddharam Satlingappa Mhetre vs. State of Maharashtra and others* 2011 (1) SCC 694: 2010 (15) SCR 201; *Gurcharan Singh vs. State (Delhi Administration)* 1978 (1) SCC 118: 1978 (2) SCR 358; *State of U.P. vs. Amarmani Tripathi* 2005 (8) SCC 21: 2005 (3) Suppl. SCR 454; *Masroor vs. State of Uttar Pradesh and another* 2009 (14) SCC 286: 2009 (6) SCR 1030 and *Nimmagadda Prasad vs. Central Bureau of Investigation* 2013(7) SCC 466 – referred to.

2. Although this appeal is not being entertained, it is found that the appellant along with 4 other accused who have been denied bail, had made numerous attempts to intimidate the witnesses, and even threatened the investigating officer. Some of the witnesses are the employees of the Jalgaon Municipal Corporation, and obviously the appellant and the 4 accused, though in jail, may still make every effort to influence them hereafter, and vitiate the trial if it is conducted in Jalgaon. A trial of

A **this nature, for that matter every trial, ought to be conducted in a free and fearless atmosphere. Hence, in the facts and circumstances of the present case, the trial of this Sessions case ought to be transferred outside that district. The transfer to the district Dhule, would be**
B **appropriate since that district is adjoining to the Jalgaon district, and it also falls within the jurisdiction of the Aurangabad Bench of the Bombay High Court. [Para 31] [1203-F, G; 1204-B-C]**

Case Law Reference :

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1994 (6) Suppl. SCR 69	**referred to**	**Para 11**
1984 (1) SCR 839	**referred to**	**Para 12**
2009 (3) SCR 998	**referred to**	**Para 17**
2010 (15) SCR 201	**referred to**	**Para 18**
2001 (3) SCR 432	**relied on**	**Para 19**
1978 (2) SCR 358	**referred to**	**Para 19**
2005 (3) Suppl. SCR 454	**referred to**	**Para 20**
2009 (6) SCR 1030	**referred to**	**Para 21**
2013(7) SCC 466	**referred to**	**Para 22**

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F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2131 of 2013.

From the Judgment and Order dated 06.08.2012 of the High Court of Bombay at Aurangabad in Criminal Appeal No. 2522 of 2012.

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A. V. Savant, Sudhanshu S. Choudhari, Vatsalya Vigya, for the Appellant.

B. H. Maralapalle, V. N. Raghupathy, Amol B. Karande,

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Manju Jetly, Sanjay Kharde, Asha Gopalan Nair for the Respondents. A

The Judgment of the Court was delivered by

H.L. GOKHALE, J. 1.Leave granted. B

2. This appeal seeks to challenge the judgment and order dated 6.8.2012 rendered by a Judge of the Bombay High Court at Aurangabad allowing the Criminal Application No. 2522/ 2012 filed by the respondent Nos.2 to 4 herein under Section 439 (2) and 482 of Code of Criminal Procedure, 1973 (Cr.P.C. C for short). The High Court order cancelled the bail granted to the appellant herein in Crime No.13/2006 registered at the City Police Station, Jalgaon. The appellant (alongwith 56 others) has been charged for offences under Sections 120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 read with Section 34 of D Indian Penal Code (I.P.C for short), and under Sections 13(2) read with 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act, 1988. The appellant is accused no.34 in that case. The appellant was granted bail on 21.5.2012 by a common order below the applications filed by accused nos. 31 to 50 under E Section 439(1) of Cr.P.C. by the Incharge Additional Adhoc District Judge No.1 and Additional Sessions Judge, Jalgaon. It is this order which has been set-aside by the High Court. The operation of the High Court has been stayed by this Court on 7.8.2012.

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3. Mr. A.V. Savant, learned senior counsel and Mr. Sudhanshu Chaudhary have appeared for the appellant. Mr. Sanjay Kharde, learned counsel has appeared for the first respondent-State of Maharashtra. Mr. B.H. Marlapalle, learned senior counsel and Ms. Kamini Jaiswal, learned counsel have G appeared for the respondent Nos.2 to 4.

4. The above referred Crime/FIR No.13/2006 was registered at the City Police Station, Jalgaon on 3.2.2006. The Charge-sheet therein came to be filed after completion of the H

A investigation much later on 25.4.2012. It is essentially about the defalcation of public money resulting into a huge loss of over Rs.169.60 crores to the Jalgaon Municipal Corporation in Maharashtra. This Corporation was a Municipal Council until about January 2004. It had framed a housing scheme in the year 1997 named as 'Gharkul' (i.e. Small house) to construct 11,424 B houses on the Municipal land for the benefit of slum dwellers. As stated above, although there are 57 accused, the main persons involved in this defalcation are stated to be two former Presidents of the erstwhile Municipal Council, namely, one Shri Sureshdada Jain and one Pradeep Raysoni, and two partners C of a construction company known as Khandesh Builders viz. Rajendra Mayur and Jagannath Vani. Shri Sureshdada Jain is said to be the main share-holder of this company.

5. Shri Sureshdada Jain is stated to have been the D President of Jalgaon Municipal Council from May 1985 to July 1994. Thereafter he was the Minister of Housing in the Shivsena–Bharatiya Janata Party (BJP) Government, in the State, during 1995-2000. He is presently an MLA of Nationalist Congress Party (NCP) from Jalgaon city. He was a minister in E the present Congress-NCP Government until recently. The appellant is also an MLA of NCP from Jalgaon (Rural) Constituency, and on the date of the impugned order he was a Minister of State in the State Government. Subsequently he has resigned as a Minister. Out of the 57 accused persons 4 have F died. Out of the remaining, 2 accused are absconding, and the above referred 2 former Presidents and 2 contractors are in custody. Remaining 47 accused including the appellant have been granted bail.

6. In 1997 when he was a Minister of Housing, Shri G Sureshdada Jain persuaded HUDCO to give loan of about 66 crores to the Jalgaon Municipal Council for the above Housing Scheme. He is said to have been instrumental in constituting a 'High Powered Committee' in the Municipal Council which was to supervise this work. The appellant was one of its

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members. The scheme was to be completed in 9 months but has not been completed so far. Pradeep Raysoni was the President of the Municipal Council during May 1996 to May 1997. As per the Charge-sheet the execution of the scheme was entrusted to Khandesh builders, violating all norms, and statutory and other legal requirements. They have been given huge interest-free mobilization advances which amongst other reasons have led to this huge liability. The work not having been completed, and the loan not having been repaid, the liabilities for the Municipal Corporation towards the interest amount have increased, and it will take quite a few years for the Corporation to repay the loan.

7. The above referred Shri Sureshdada Jain was arrested sometimes in March, 2012, and the charge-sheet has been filed on 25.4.2012. The appellant was issued a notice dated 16.5.2012 under Section 160 of Cr.P.C. to attend at the Jalgaon Police Station on 19.5.2012. Accused nos. 31 to 50 including the appellant applied for bail under Section 439(1), and they were so released by the above referred order passed on 21.5.2012. This order has been set aside by the impugned order of the High Court. We are informed that the charges have been framed by the trial court, and the recording of the evidence is yet to start. Out of various charges, the charge under Section 409 has not been framed, but Mr. Sanjay Kharde, learned counsel for the State, has informed us that the State is going to apply for framing of the charge under this section also. A supplementary charge sheet has also been filed on 2.6.2012.

8. The initial charge-sheet leading to the prosecution has been placed on record. It runs into more than 268 pages and contains various details. Shri Sureshdada Jain is said to have led the majority in the Jalgaon Municipal Council at the relevant time under a group known as the 'Shahar Vikas Aghadi' (i.e. City Development Front). It is alleged that Shri Sureshdada Jain in his capacity as the Minister decided to use the lower income group scheme for wrongful gain, which has resulted into huge

A liability to the Municipal Corporation, and wrongful gain for himself and other conspirators. It is alleged that he arranged the funds from HUDCO for this particular project, and saw to it that the contract is given to Khandesh builders at exorbitant rates, ignoring the lower bid given by another contractor. The B councilors were made to approve all the decisions of the above referred committee which was controlled by earlier referred Pradeep Raysoni. The investigation revealed that the committee was only for the namesake, and it was Raysoni who was taking all the decisions. No written orders were passed. C Large advances were released to the builders under what was called as 'Ummeed Manjuri' (i.e. approval in anticipation), and all the Municipal Councilors were made to sign those decisions.

9. When the accused no. 31 to 50 including the appellant moved for bail under Section 439, the respondent No.2 herein D appeared in the proceeding and sought permission to assist the Special Public Prosecutor. This is recorded in the order of the Sessions Judge. The order records the objection that it was a serious economic offence involving public money, and that the appellant was a powerful and influential person in Jalgaon, E and there was a possibility that he may misuse his liberty and tamper with the prosecution. The learned Sessions Judge has however observed that beyond the aforesaid apprehension nothing has been pointed out that the appellant had misused his status. The learned Judge has then observed that F considering the nature of the offence, it may be said that the evidence to be collected and available with the prosecution must be in the form of documents, and the apprehension by pressurizing the prosecution witnesses can be checked by imposing reasonable conditions. The learned Judge therefore G observed that there was no point in detaining the accused in jail particularly in the circumstances when the investigation of the crime was on the verge of completion. The Judge, therefore, released all those accused nos. 31 to 50 on personal bonds in the sum of Rs.50, 000/- with one solvent surety in the like H amount.

10. The respondent Nos. 2 to 4 sought to set-aside this order by filing Criminal Application No. 2522 of 2012 dated 11.6.2012, and the High Court has allowed it, by passing the impugned order. The High Court has noted in its order that:- A

(i) The appellant was arrested on 21.5.2012 and was produced before the Special Court along with some councillors on the same day with the remand report. Bail application was moved on the same day. B

(ii) In paragraph 14 of his order the learned Judge noted that under the proviso to Section 439(1) of Cr.P.C. where the person concerned is accused of an offence which is punishable with imprisonment of life (such as Section 409 I.P.C. in the present case), the Sessions Judge has to give the notice of the application for bail to the public prosecutor, unless for the reasons to be recorded in writing, it is not practicable to give such notice. In the instant case, no order was made giving notice to the public prosecutor, nor reasons for the same were recorded in the order granting bail. The only order made on the very day was "I.O. (i.e. investigation officer) to say". The matter was heard immediately there and then. C D E

(iii) Even so, the special prosecutor had requested for police custody at least for 2 days. The same was, however, refused. He then filed a reply running into 8 pages to oppose the application, but the order passed by the learned Session Judge did not refer to this reply or the contents thereof. F

(iv) Paragraph 15 of the impugned order notes that the appellant was not detained nor kept behind the bars even for a single day. This was in spite of the fact that there was a record like giving 5 work orders to the brother of the appellant, and during custodial investigation more material could have been collected. G

11. The learned Judge has noted in paragraph 16 of his order that cogent and overwhelming circumstances are H

A necessary for an order of cancellation of bail already granted, as laid down by this Court from time to time. He has referred to the judgment in *Dolat Ram Vs. State of Haryana* reported in 1995 (1) SCC 349 in this behalf. He has, however, also observed in paragraph 17 that if the order is by a wrong and B arbitrary exercise of discretion, it deserves to be cancelled. He has further observed that nature and seriousness of the offence and impact on the society particularly in economic offences are always important considerations in such a case.

C 12. Mr. A.V. Savant, learned senior counsel appearing for the appellant has relied upon various judgments to submit that cancellation of bail is not something to be easily granted. He has drawn our attention the judgment of this Court in *Bhagirathsinh Vs. State of Gujarat* reported in 1984 (1) SCC 284 where this Court has observed that very cogent and D overwhelming circumstances are necessary for an order seeking cancellation of bail, and power to grant bail is not to be exercised as if it is a punishment before the trial. The Court has held in that matter that the material considerations in such a situation are whether the accused would be readily available E for his trial, and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

13. Mr. Pandharinath Ramchandra Pawar, Deputy S.P., Jalgaon, who is the investigating officer, has filed a detailed F affidavit in reply, dated 28.9.2012, in this Court, placing on record voluminous material as to how Shri Sureshdada Jain and some of the principal accused including the appellant have resorted to pressure tactics at various stages of the case. Amongst other statements against the appellant, he has G specifically placed on record the following material:-

(i) In paragraph 5 (iii) of his affidavit he has placed on record that the appellant brought a 'morcha' (i.e. a procession to protest) on the police station on 29.3.2006. He has stated therein as follows:-

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"That right from the time when the crime was registered, the petitioner-accused have tried to create pressure on investigation machinery by bringing morcha on police station by the leadership of petitioner and Suresh Jain and demanding arrest of themselves by police, therefore, offence was registered against the Councillors including the present petitioner as crime no.27/2006 on 29.3.2006."

He has annexed the extract of the station diary entry dated 30.3.2006 as Annexure R2 to this affidavit. This extract from the station diary records that some of the Municipal Councillors including the appellant had moved a no-confidence motion against the Municipal Commissioner, Mr. Praveen Gedam, who had lodged the complaint leading to this prosecution, and then these councillors created a ruckus in the Council Hall. Thereafter, they took out a 'morcha' to the police station and held a demonstration. The appellant is specifically named in this station diary entry, as a person leading the 'morcha'.

(ii) Thereafter, he has placed on record that Sureshdada Jain and his associates, including the appellant, on various occasions resorted to pressure tactics like taking out the 'morcha', threatening the investigation officer, slapping the civil surgeon and so on, and thereby they created an atmosphere of terror in the city. Thereafter in this connection he has stated in paragraph XXV and XXVI as follows:-

"[XXV] All the above conduct clearly shows that the petitioner himself and through his supporters sent a message in society that they are able to teach a lesson to the witnesses, the Complainant, who is I.A.S. Officer, Investigation Officer, who is I.P.S. Officer, Jailor, who is class one Officer and Dr. Rathod, who is also class one Officer of Civil Hospital then, anybody may not dare to go against them.

[XXVI] Moreover, they have created terrorized atmosphere in the society of Jalgaon city. In fact, most of the witnesses in this case are ordinary people and

A *many witnesses are employee in Jalgaon Municipa Corporation, in which, the party of this group is in power. Therefore, considering, the human probabilities, witnesses will not come forward to depose against the present accused and other accused."*

B 14. Mr. A.V. Savant, learned senior counsel for the appellant submitted that these allegations are essentially against Sureshdada Jain and not so much against the appellant herein. It is difficult to accept this submission. The station diary entry dated 30.3.2006 specifically records the name of the C appellant as amongst those who took out the 'morcha' to the police station. It is also clear from what the Deputy S.P. has stated in his affidavit that the appellant was associated with Shri Sureshdada Jain on different occasions when an attempt was made to take the law into hands.

D 15. It is specifically stated in the paragraph 4 of the above referred affidavit of Mr. Pawar that a detailed argument was made before the Sessions Judge on behalf of the prosecution pointing out a prima facie case against the appellant. It is also stated therein that the Jalgaon Municipal Council had illegally E given more than 30 contracts to Jalgaon Construction Company belonging to the appellant as the beneficiary in the conspiracy. The past conduct of the appellant after the registration of the present crime was pointed out in detail, as well as his criminal antecedents with proof, and also the fact that the bail F applications of 3 of the main accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge by the orders dated 17.5.2012 and 19.5.2012. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The counsel G for the State of Maharashtra has, therefore, submitted that the order passed by the Sessions Judge was a perverse order since none of these factors was considered by the Court.

16. Mr. Savant, learned senior counsel appearing for the appellant submitted that it is a well established proposition that

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"bail not jail" is the rule of law, and cancellation of bail is not to be lightly resorted to. He referred to the judgment of this Court in *Bhagirathsinh* (supra) where the appellant facing the charge under Section 307 IPC, was granted bail by the Sessions Judge, but the bail was cancelled by the High Court. In paragraph 7 of the judgment this Court has observed as follows:-

> *"**7.** In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. 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. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."*

A 17. Thereafter he referred to the judgment in *Fida Hussain Bohra Vs. State of Maharashtra* reported in 2009 (5) SCC 150 where in the case of a charge involving criminal misappropriation of public funds some accused were granted bail, but the High Court had cancelled the bail granted to the B appellant. This Court held that the appeal from an order granting bail had to be considered differently. It is, however, material to note that this Court also observed in paragraph 8 that correctness or otherwise of the order passed by the Appellate Court setting aside an order granting bail or an order C of cancellation of bail had to be considered on particular facts of each case.

18. The judgment of this Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others* reported on 2011 (1) SCC 694 was heavily relied upon, wherein this Court has D held that where the accused has joined the investigation, is cooperating with the investigating agency, and is not likely to abscond, custodial interrogation should be avoided.

19. These submissions were countered by the counsel for the respondents. They referred to what this Court has observed E in paragraphs 10 and 11 of *Puran Vs. Rambilas and another* reported in 2001 (6) SCC 338. In paragraph 10 this Court has referred to *Daulat Ram Vs. State of Haryana* (supra) which was also referred to by the High Court in the impugned order. After referring to this judgment, this Court has noted that rejection F of a bail in a non-bailable case at an initial stage or a cancellation of bail already granted had to be considered on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. The Court has also noted that it has been held G that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or abuse of the concession granted to the accused. Thereafter, this Court has observed in paragraph 10:-

H ***"10.....*** *It is, however, to be noted that this Court has*

clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected."

In paragraph 11, the Court has referred to the judgment in *Gurcharan Singh Vs. State (Delhi Administration)* reported in 1978 (1) SCC 118, and thereafter observed that the remedy under Section 439(2) to approach the High Court is also available where the State is aggrieved by the Sessions Judge granting bail on the basis of unjustified, illegal or perverse order. This paragraph 11 reads as follows:-

"***11.*** *Further, it is to be kept in mind that* ***the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself*** *or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn. ((1978)1SCC118). In that case the Court observed as under: (SCC p. 124, para 16)*

> "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 under**

A **Section 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 existing, it is futile
B 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-à-vis the High Court."

C (emphasis supplied)

20. The judgment of this Court in *State of U.P. Vs. Amarmani Tripathi* reported in 2005 (8) SCC 21, was also relied upon in support. In that matter the respondent and his wife were admitted to bail by an order passed by the High Court
D on 29.4.2001 and 8.7.2004. Considering the totality of the factors including that there was a clear possibility of the respondents intimidating the witnesses, this Court cancelled the bail by its order dated 26.9.2005 which was passed more than a year after the grant of bail. What is relevant for our purpose
E is what this Court has observed in paragraph 18 to the following effect:-

"18.....While a vague allegation that the accused may tamper with the evidence or witnesses may not be a
F *ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused....."*

G *(emphasis supplied)*

21. *Masroor Vs. State of Uttar Pradesh and another* reported in 2009 (14) SCC 286 was referred wherein this Court has observed in paragraph 12 that this Court does not interfere with the order of High Court granting or rejecting the bail but

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where there was a manifest error in the matter of grant of bail, it required interference. In paragraph 15 this Court observed as follows:-

> *"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned...."*
>
> *(emphasis supplied)*

22. Paragraph 25 of *Nimmagadda Prasad Vs. Central Bureau of Investigation* reported in 2013 (7) SCC 466 was brought to our notice wherein with respect to the economic offences the Court has observed as follows:-

> ***"25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.*** *The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*
>
> *(emphasis supplied)*

23. We have noted the submissions of the counsel for the appellants as well as the respondents. In the present case we are concerned with the question as to whether High Court was in error in cancelling the bail granted to the appellant. Having noted the above aspects we are clearly of the view that the Sessions Court had not complied with the mandatory proviso to Section 439(1). This proviso lays down that before granting

A bail to a person who is accused of an offence which is punishable with imprisonment for life, and which is exclusively triable by the Court of Sessions, it shall give a notice of the application for bail to the public prosecutor. In the instant case, the facts reveal that the appellant appeared before the learned B Sessions Judge on 21.5.2012, when his application for bail was taken up for consideration. The Sessions Judge passed an order 'I.O. to say'. The matter was taken up there and then. The prosecutor applied for remand of at least 2 days which was declined. The notice under the proviso under the Section 439 C (1) implies a proper and full opportunity to the prosecutor to point out as to why bail should not be granted. The initial chargesheet in the instant case was itself running into more than 268 pages. The Sessions Judge ought to have granted adequate time to the prosecutor to reply on the basis of this D chargesheet, for him to pass a considered order. Consequently the order of bail does not reflect upon the contents of the charge sheet.

24. As pointed out by Mr. Pawar, Deputy S.P. in his affidavit that although the matter was heard there and then, the E prosecutor did make a detailed argument pointing ought the prima facie case against the appellant. The past conduct of the appellant after the registration of the present crime was also pointed out in detail as well as his criminal antecedents with proof, and also the fact that the bail applications of 3 of the main F accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge by the order dated 17.5.2012 and 19.5.2012. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The counsel for the State of Maharashtra G has therefore rightly submitted that the order passed by the Trial Court was a perverse order since none of these factors were considered by the Court.

25. The appellant and the accused have been charged for an offence which may result into the punishment for H imprisonment for life. It is a serious charge supported by a

detailed charge-sheet running into over 268 pages. It is stated therein that the Jalgaon Municipal Corporation had illegally given more than 30 contracts to Jalgaon Construction Company belonging to the appellant as a beneficiary in the conspiracy. Obviously the prosecutor required time to interrogate the accused, and the custodial interrogation in such a situation, for at least two days, could not have been denied. It could have aided the investigation by unearthing relevant information. The bail order was however passed on the same day, there and then. We are conscious of the fact that the liberty of a citizen even if he is an accused is undoubtedly important, but at the same time when the prosecutor had pointed out to the Court that the role of the appellant was no less than that of the three others whose bail had been rejected, the learned Judge ought to have considered these circumstances, justifying custodial interrogation, with due diligence.

26. Thus it could certainly be said that the order passes by the Sessions Judge was an order passed in breach of the mandatory requirement of the proviso to Section 439(1) of Cr.P.C. It is also an order ignoring the material on record, and therefore without any justification and perverse. As held by this Court in *Puran Vs. Rambilas* (supra), the High Court does have the power under Section 439 (2) of Cr.P.C. to set aside an unjustified, illegal or perverse order granting bail. This is an independent ground for cancellation as against the ground of accused mis-conducting himself.

27. In the instant case, the attempts made by the appellant to pressurize the witnesses and even the investigating officer are clearly placed on record through the affidavit of the Deputy S.P. Mr. Pawar. On that ground also it could be said that the appellant will be pressurizing the witnesses if he is not restrained. This being the position, we cannot find any fault with the order of the High Court cancelling the bail on that ground also. The order does record the cogent and overwhelming circumstances justifying cancellation of bail. The nature and seriousness of an economic offence and its impact on the

A society are always important considerations in such a case, and they must squarely be dealt with by the Court while passing an order on bail applications.

28. We must note one more objection raised on behalf of the appellant, namely, that respondent Nos. 2 to 4 had no locus B to file an application seeking cancellation of bail. It is contended that respondent Nos. 3 and 4 had not even filed any application before the Trial Court. They later on joined the respondent No. 2 to move the High Court by filing SLP (Crl.) Application to quash and set aside the order granting bail. Mr. Marlapalle, C learned Senior Counsel and Ms. Kamini Jaiswal learned counsel appearing for these respondents pointed out in reply that the Criminal Application filed in the High Court was moved under Section 439(2) read with Section 482 of Cr.P.C. Paragraph 2 of the said Criminal application stated as follows:-

D

> *"2. The applicants submit that they are residents of Jalgaon. They are citizens of India. They are tax payers. They are beneficiaries of various policies and amenities provided by the Municipal Corporation to the citizens of Jalgaon. The applicants are victims of the offence* E *committed by the Respondent No.2 alongwith other accused. The applicants have locus standi to seek the cancellation of the bail granted to the respondent No. 2 and the other accused persons."*

F 29. It was submitted by these learned counsel that respondent No. 2 had appeared before the Sessions Judge to assist the prosecution, which is recorded in the order passed granting bail. As far as filing of the aforesaid Criminal Application before the High Court by respondent Nos. 2 to 4 is concerned, the same has not been specifically objected to G in the High Court, and therefore, there was no occasion for the High Court to look into any such objection. Now, this objection is being raised in this Court. The learned counsel submitted that the respondent Nos. 2 to 4 had invoked the inherent jurisdiction of the High Court under Section 482 of Cr.P.C., and the power H of the High Court to entertain such an application has been

upheld by this Court in paragraph 17 of *Puran Vs. Rambilas* (supra). In that matter bail had been granted by the Sessions Court, and the bail order was cancelled by the High Court, not on any petition by the State, but on one filed by the complainant invoking Sections 439 (2) and 482 of Cr.P.C.

30. In our view the objection raised by the appellant cannot be sustained in view of what is observed by this Court in paragraph 17 in *Puran Vs. Rambilas* (supra) which reads as follows:-

> ***17.*** *Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect.* ***It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified*** *(Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551 and Krishnan v. Krishnaveni (1997) 4 SCC 241)*
>
> *(emphasis supplied)*

For all these reasons, we do not find any merit in this appeal and the same does not deserve to be entertained.

31. Although this appeal is not being entertained, what we find is that the appellant along with 4 other accused who have been denied bail, had made numerous attempts to intimidate the witnesses, and even threatened the investigating officer. Some of the witnesses are the employees of the Jalgaon Municipal Corporation, and obviously the appellant and the 4 accused, though in jail, may still make every effort to influence them hereafter, and vitiate the trial if it is conducted in Jalgaon. Mr. Kharde, learned counsel appearing for the State has submitted that it will be in the fitness of things that the trial be transferred outside the district. Mr. Savant, learned senior

A counsel appearing for the appellant has no objection for the same. Mr. Marlapalle and Ms. Kamini Jaiswal appearing for the respondents No.2 to 4 have also supported this submission. We quite see the merit of this submission. A trial of this nature, for that matter every trial, ought to be conducted in a free and
B fearless atmosphere. Hence, in the facts and circumstances of the present case we are of the view that the trial of this Sessions case ought to be transferred outside that district. The transfer to the district Dhule, would be appropriate since that district is adjoining to the Jalgaon district, and it also falls within the
C jurisdiction of the Aurangabad Bench of the Bombay High Court.

32. Before we conclude we make it clear that the observations made herein are for the purposes of deciding whether the High Court was in any way in error in cancelling
D the bail granted to the appellant. This order is being passed on the basis of the material that has been placed on record for that purpose. Needless to state, but we make it clear that as and when the trial is conducted, it will be decided on the basis of the evidence, which will be brought on record during the
E course of the trial.

33. The appeal is accordingly dismissed. The appellant will surrender to the City Police Station Jalgaon, within two weeks hereof. The Sessions case arising out of Crime/FIR No.13/ 2006 registered at the City Police Station Jalgaon on 3.2.2006
F is hereby transferred to the Addl. Sessions Judge, Dhule, incharge of cases under the Prevention of Corruption Act, 1988. The learned Addl. Sessions Judge, Jalgaon seized of this matter will transfer the records of the concerned proceeding within four weeks to the said Court. Registrar General of the
G Bombay High Court is directed to see to it that necessary follow up steps are taken forthwith. Registry to send a copy of this Judgment to the Registrar General High Court Bombay, District Judge, Jalgaon and District Judge, Dhule.

Bibhuti Bhushan Bose Appeal Dismissed
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