IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.678 OF 2024

Raju Anna Chaughule ... Applicant

V/s.

The State Of Maharashtra … Respondent

WITH

INTERIM APPLICATION NO. 2069 OF 2024

IN

CRIMINAL APPLICATION NO.678 OF 2024

Mahant Rajaram Das Guru Shri Shaligram Vaishanav ... Applicant

V/s.

The State Of Maharashtra … Respondent

Mr. Ganesh Gupta with Hemant Bhand, Sahil Ghorpade, Madan Khansole, Jagrut Patil and Surya Gupta i/by GG Legal Associates, for the applicant.

Mr. Ashok Tajane, for the applicant in IA/2069/2024.

Mr. Veera Shinde, APP, for the Respondent / State.

CORAM : ANIL S. KILOR, J.

DATE : 22ND OCTOBER, 2024.

PC:

1. Heard.

This order is corrected as per speaking to the minutes of the order dated 25.10.2024
varsha

2. In the present matter a challenge is raised to the order dated 24.04.2024 passed in Criminal Revision Application No. 81 of 2024, setting aside the order dated 15.04.2024, rejecting the police custody and further quashing and setting the regular bail granted to the applicant by the Magistrate.

3. The learned Sessions Court further directed the learned ACJM, Nashik to consider the remand papers afresh in the light of the observation in revision and pass appropriate order in respect of remand after hearing both the sides.

4. In the present application, thus, the challenge is raised to the extent of cancellation of bail in the revision application.

5. I have heard the learned counsel for the respective parties.

6. The learned counsel for the applicant submits that the order cancelling the bail granted to the applicant is without jurisdiction as held by the Hon'ble Supreme Court of India in the case of *'Amar Nath and Ors v. State of Haryana and Ors.')*[1]. He further points out that there was no prayer made in the revision for cancellation of bail and despite the same, it was cancelled. He, accordingly, submits that the order is illegal as a liberty was taken away in a wrongful manner.

7. On the other hand, the learned APP submits that this Court while considering the application of the applicant for grant of Anticipatory Bail, has observed in Para 10 of the order dated 22.02.2024 passed in Anticipatory Bail Application No. 476 of 2024 that the custodial interrogation is necessary.

1 (1977) AIR SC 2185

8. It is submitted that the said order was confirmed by the Hon'ble Supreme Court of India by rejecting the SLP. It is thus, submitted that there is no error committed by the learned trial Court in passing the judgment and order dated 24.04.2024.

9. The learned APP further points out that the mentioning of wrong provisions would not vitiate the order if the court is having power to pass such order under some different provision. She submits that even though there was no specific provision for cancellation of bail, the order will not be vitiated.

10. The learned counsel for the informant reiterates the submission made by the learned APP and submits that in similar facts and circumstances in a judgment of this Court the Co-ordinate bench has observed that in such matters the custodial interrogation is necessary. He further points out that even this Court dealing with the anticipatory bail filed the present applicant has recorded the same observations. He, therefore, supports the impugned order and judgment.

11. In the above backdrop of the submissions made by the respective parties, I have perused the record and the impugned judgment.

12. Before dealing with the matter on merit, it is pertinent to note that it is an admitted fact that the State had moved a separate application for cancellation of bail granted to the applicant. Thus, at the first instance, it cannot be said that the revision filed by the State was for cancellation of bail. Moreover, from the prayer clause in the

revision, it is evident that none of the prayers suggests such relief sought by the State in the said revision.

13. For the sake of convenience the prayer clauses are reproduced hereinunder, which read thus:

> *"a. That R & P be called after its perusal this revision petition be allowed.*
>
> *b. Any other and further legal and equitable reliefs, just and proper, in the ends of justice may kindly be granted in favour of the applicant.*
>
> *c. For this act of kindness the applicant shall ever pray."*

14. From the above referred prayer clauses, it can be said that there was no prayer clause even for quashing and setting the order dated 15.04.2024 rejecting the police custody.

15. The clause (a) shows that the prayer was made to call R and P for perusal and allow the revision and prayer clause (b) shows that, the legal and equitable reliefs was sought. There was no specific prayer about quashing of the order rejecting the police custody or for cancellation of bail.

16. The Hon'ble Supreme Court of India in the case of Amar Nath (Supra), has observed thus:

> *"6. Let us now proceed to interpret the provisions of S. 397 against the historical background of these facts. Sub- section (2) of S. 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, the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of S. 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 S. 397(2) 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, right 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 S. 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 under S. 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."*

17. From the above referred observations, it is evident that the term 'interlocutory order' used in sub section 2 of Section 397 of Cr.P.C. covers the challenge made to the orders for bail. The Hon'ble Supreme Court of India in clear term has observed that the order of granting bail not amount to interlocutory orders against which a revision under

Section 397 (2) of Cr.P.C can be maintained.

18. In the present matter the learned revisional Court without there being jurisdiction or any prayer for cancellation of bail, cancelled the bail granted to the applicant. Therefore, there was no doubt that the order is without jurisdiction and contrary to the law.

19. In that view of the matter, I pass the following order:

ORDER

i) Criminal application is allowed;

ii) The impugned judgment and order dated 24.04.2024 passed by the Additional Sessions Judge, Nashik in Criminal Application No. 81 of 2024 is hereby quashed and set aside to the extent cancelling the bail granted to the applicant under section 439 (2) of Cr.P.C.

20. Needless to mention herein that this Court has not considered the challenge as regards the quashing and setting aside the order dated 15.04.2024, rejecting the police custody.

21. Liberty is granted to the State to pursue the application for cancellation of bail which is pending before the Judicial Magistrate First Class, Nashik.

22. The application filed by the respondent no. 2, informant for cancellation of bail, pending before this Court is hereby permitted to

withdraw with liberty to apply before the trial Court. If such application is filed, the learned trial Court shall decide the same on its own merit.

(ANIL S. KILOR, J)

This order is corrected as per speaking to the minutes of the order dated 25.10.2024
varsha