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Common Order in-
Misc. Application Nos.133/15 & 234/14

**BEFORE DESIGNATED COURT UNDER M.P.I.D. ACT AT
BOMBAY CITY CIVIL & SESSIONS COURT AT MUMBAI**

MISC. APPLICATION NO.133 OF 2015

IN

BAIL APPLICATION NO.20 OF 2014

IN

BAIL ORDER DATED 09/07/2014

IN

EOW, C.R.NO.89/13 (MPID Case No.1 of 2014)

State of Maharashtra)
Through Economic Offences Wing,)
Unit-V, having office at STF Building)
Azad Maidan Police, St. Compound,)
Mumbai – 400 001) .. **Applicant**

Versus

Mr.Rajesh Budhalal Mehta)
M/s. Swastik Overseas Corporation)
Flat No.3 & 4, Suvidha Apartments)
First Floor, Near Vasna Bus Stop,)
Sarkhej Road, Ahmedabad) .. **Respondent /**
Gujarat – 380 007 **(Orig. Accused/Applicant)**

Learned SPP Mr.Avhad for the Applicant/State.

Learned Advocate Mr.Pasbola for Respondent/Orig.Accused

AND

MISC. APPLICATION NO.234 OF 2014

IN

MISC. APPLICATION NO.193 OF 2014

IN

EOW, C.R.NO.89/13 (MPID Case No.1 of 2014)

Pankaj Saraf)
Aged : 39 years, residing at 182,)
Venus Apartment, Cuffe Parade,)
Mumbai – 400 005) .. **Orig.Complainant**
(Intervener)

Versus

1. **Mr.Rajesh Buddalal Mehta**)
Age about 56 years residing at)
Flat Nos.3 & 4, Suvidha Apartments)
First Floor, Near Vasana Bus Stop,)
Sarkhej Road, Ahmedabad)
Gujarat – 380 007)
)
2. **The State of Maharashtra**)
Through Economic Offence Wing,)
Unit-V, having office at STF Building,)
Azad Maidan Police Station Compound,)
Mumbai – 400 001) .. **Respondents**

Learned Advocate Mr.Karnik for the Orig. Complainant.

Learned Advocate Mr.Pasbola for Respondent No.1.

Learned SPP Mr.Avhad for Respondent No.2.

CORAM : AJAY DINODE
Special Judge, M.P.I.D. Act
& Addl. Sessions Judge,
City Civil & Sessions Court, Gr.Bombay

DATE : 01st September, 2016
(Court Room No.33)

: COMMON ORDER :

Misc. Application No.133 of 2015 is filed by the State and Misc.Application No.234 of 2014 is filed by the original informant claiming the cancellation of bail granted to the accused-Rajesh Budhalal Mehta in Bail Application No.20 of 2014 vide order dtd.09/07/2014.

2. As both these applications involve the common prayer and the points for determination and adjudication involved are interconnected, these applications are decided by the common order.

3. According to the State and the original informant, accused-Rajesh was arrested on 01/05/2014 in C.R.No.89 of 2013 of E.O.W., Mumbai. Accused-Rajesh preferred an application for bail bearing no. 20 of 2014 before this Court. At the time of hearing of the bail application, accused-Rajesh tendered and relied upon the affidavit (Exh.3) in support of his contentions, whereby he agreed to make the repayment as scheduled in the said affidavit. This Court accepted the said affidavit (Exh.3) and relying upon the same, bail was granted. From the discussion and reasonings of the order dtd.09/07/2014 in Bail Application No.20 of 2014 it is apparent that, this Court granted bail to the accused-Rajesh by placing explicit reliance on the affidavit of undertaking (Exh.3).

4. According to the State and the original informant, accused-Rajesh induced this Court to pass an order of granting bail by giving such affidavit of undertaking. But, later on he committed infringement of the terms and conditions of the undertaking and thus, now cannot enjoy the liberty of bail. Accused-Rajesh committed default in performing the terms and conditions of the undertaking and thus, now his bail is liable to be cancelled towards the non-compliance of the undertaking at Exh.3. Learned SPP for State argued that from the operative order of bail dtd.09/07/2014, it is apparent that this Court has already made it clear that accused-Rajesh shall strictly adhere to the terms and conditions of the undertaking given at Exh.3 and failing of

which, his bail shall stand cancelled automatically. The order dtd. 09/07/2014 is self sufficient to cancel the bail of the accused-Rajesh and, therefore, Misc.Application No.133 of 2015 is to be allowed.

5. Learned Advocate for the original informant argued that accused-Rajesh gave the false undertaking suppressing the encumbrances over the properties which were offered as collateral securities and also failed to comply the terms and conditions of the affidavit of undertaking (Exh.3). There is no prayer for discarding the affidavit of undertaking (Exh.3) or modification of the condition of the repayment at any point of time by the accused-Rajesh. Thus, in view of the order dtd.09/07/2014, which is clear enough that in case of default in compliance of the affidavit of undertaking (Exh.3), bail is liable to be cancelled automatically, Misc. Application No.234 of 2014 is liable to be allowed.

6. Accused-Rajesh filed the reply and opposed Misc. Application Nos.133 of 2015 and 234 of 2014. According to him, undisputedly affidavit of undertaking was filed below Exh.3 in Bail Application No.20 of 2014. Undisputedly, the terms and conditions in the affidavit of undertaking (Exh.3) are not strictly followed. Hence, in strict sense of law, there is the breach of undertaking (Exh.3). But, according to the accused-Rajesh, he has made every efforts to make the payments. The documents and further investigation reveal that he is only the power of attorney holder of 'Swastik Overseas Corporation'. He has no actual power and control over the management and administration of 'Swastik Overseas Corporation'.

7. According to accused-Rajesh, from the further investigation and further remand application, it appears that one Rajeev Mahavirprasad Todi was the actual beneficiary, who received the entire amount and from the remand application time to time filed after the arrest of the accused-Rajeev Mahavirprasad Todi, the State itself contended in the remand applications that the accused-Rajesh is the puppet at the hands of the accused-Rajeev Mataprasad Todi. It was made further clear that accused-Rajesh and his family members received only an amount of Rs.2.68 Crore from the total amount. From the further investigation and the documents and as per the contentions of the State itself, he is not the actual culprit. Accused-Rajeev Mahavirprasad Todi is the co-accused who received the entire benefits. Thus, the so called affidavit of undertaking (Exh.3) is merely signed as the puppet under the instructions of co-accused-Rajeev Mahavirprasad Todi. Hence, for the defaults of the main accused-Rajeev Mahavirprasad Todi, he cannot be put behind the bars.

8. According to accused-Rajesh, there is no intentional default or infringement of the terms and conditions of the affidavit of undertaking (Exh.3). Accused-Rajesh has cleared near about Rs.30 to 40 Lac of his liability out of total Rs.3.56 Crore which actually have been received by him. He cannot be forced to recover the amounts given in the undertaking (Exh.3) as he was not the beneficiary. Thus, accused-Rajesh claimed rejection of miscellaneous applications.

9. Learned Advocate for the accused-Rajesh argued contending that affidavit of undertaking (Exh.3) was signed by the accused-Rajesh actually acting as puppet of the accused-Rajeev

Mahavirprasad Todi, who is the key accused in the transaction. He further argued that bail granted to accused-Rajesh cannot be cancelled for violation of the affidavit of undertaking (Exh.3). In support of such contention, he relied on the judgment of Hon'ble Supreme Court in the matter of *Biman Chatterjee Vs. Sanchita Chatterjee (2004 CRI.L.J. 1451)*.

10. Heard the parties. Perused the record and reply filed by accused-Rajesh. Perused the documents and the order dtd.09/07/2014 in Bail Application No.20 of 2014.

11. Perusal of order dtd.09/07/2014 in Bail Application No.20 of 2014 clearly reflects that the accused-Rajesh gave an undertaking vide Exh.3 at the time of hearing of bail application. This Court in Para 9 of the order observed that in view of such undertaking given by the accused-Rajesh, the dues with NSEL were settled. Court held the said conduct bonafide. So also accused-Rajesh has undertaken to give his 7 properties as collateral security towards the repayment of the amount undertaken by him and it was found to be bonafide at that stage. As per the operative order of the bail condition No.4, it is observed by this Court,

“Applicant shall strictly adhere to the undertaking given by him vide Exh.3, failing which the bail application of applicant shall stands cancelled automatically.”

12. In view of the discussion and reasonings of this Court and in view of condition No.4 of the bail order dtd.09/07/2014, there is no scope for this Court to go again into the “reasons” for the infringement/default of the undertaking (Exh.3). Whether the

default/infringement of the undertaking (Exh.3) is intentional or bonafide, cannot be considered whilst deciding this application for cancellation of bail. Condition No.4 in the bail order dtd.09/07/2014 in Bail Application No.20 of 2014 is itself apparently clear and self operative. As soon as it is pointed out that accused-Rajesh has not strictly adhere to the undertaking given at Exh.3 in Bail Application No. 20 of 2014, the order makes it clear that the bail of the accused-Rajesh shall stands cancelled automatically.

13. It appears from the record that the accused-Rajesh gave affidavit of undertaking (Exh.3). Though it is argued that accused-Rajesh signed the said undertaking being the puppet of the co-accused-Rajeev Mahavirprasad Todi, he is merely signatory of the affidavit (Exh. 3) and key accused-Rajeev Mahavirprasad Todi has to fulfill the conditions etc., such facts are not clearly mentioned in the affidavit of undertaking (Exh.3). It was represented by the accused-Rajesh in the affidavit of undertaking (Exh.3) that there will be the repayment as scheduled in Exh.3. In addition to the scheduled repayment, accused-Rajesh has also offered his 7 properties towards the collateral security for the repayment of the amount undertaken by him. Affidavit of undertaking (Exh.3) was filed by the accused-Rajesh on his own accord and without any compulsion. He caused this Court to rely upon the said affidavit (Exh.3) to show his bonafides. Thus, at this later stage when there is undisputed infringement/ breach of the terms and conditions of the undertaking (Exh.3), the argument that undertaking (Exh.3) was signed merely being the puppet, cannot be accepted.

14. Though it is argued by accused-Rajesh that he is not the

actual beneficiary of the amount and the accused-Rajeev Mahavirprasad Todi has to repay the amount as per the undertaking (Exh.3), no any application for modification, alteration or relaxation of the conditions of bail is moved by the accused-Rajesh. There is no prayer to discard the affidavit of undertaking (Exh.3) at any point of time. It is also apparent that accused-Rajesh offered his 7 properties as collateral security towards the repayment of the amount as per the undertaking (Exh.3). But, now it appears that various persons are coming forward raising objections of the “claims or liabilities” over the said properties. Fact remains that accused-Rajesh has not disclosed that there are encumbrances over the properties offered by him as collateral security.

15. The judgment of Hon'ble Supreme Court in the matter of “***Biman Chatterjee Vs. Sanchita Chatterjee***” (supra) relied upon by the accused-Rajesh, makes it clear that bail cannot be granted on the basis of assurances and compromise and also bail cannot be cancelled for violation of terms of compromise.

16. But, in the facts and circumstances of the case, when this Court is dealing with an economic offence under the special statute of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (In short, MPID Act) wherein the paramount consideration of the Court is to protect the interest of the investors, the Court accepted the affidavit of undertaking (Exh.3) towards bonafide offer by the accused-Rajesh to recover the amount of the investors. Thus, interest of the investors was taken into consideration at the time of passing of the order dtd.09/07/2014 in Bail Application No.20 of 2014.

17. The judgment of Hon'ble Supreme Court relied upon by the learned Advocate for the accused-Rajesh is on the point of granting bail on the basis of mere statement of compromise, which was later on failed. But in the case at hand, it is not the case of compromise between the parties. Accused-Rajesh induced this Court to pass an order of bail by furnishing affidavit of undertaking (Exh.3) suo-moto, whereby he agreed the repayment of amount to safeguard the interest of the investors. Thus, in the case at hand, it is the apparent case of infringement of suo-moto undertaking furnished by the accused-Rajesh, which is totally different from the facts and circumstances in the judgment of Hon'ble Supreme Court in the matter of "Biman Chatterjee Vs. Sanchita Chatterjee" (supra). Thus, with due respect to the principle laid down by the Hon'ble Supreme Court in the matter above, it is not applicable to the facts and circumstances of this case.

18. As discussed earlier, order dtd.09/07/2014 in Bail Application No.20 of 2014 was self operative and provides for cancellation of bail, in case of failure of accused-Rajesh to strictly adhere to the undertaking (Exh.3), as soon as it is pointed out that the undertaking (Exh.3) is violated, bail of the accused-Rajesh stands cancelled automatically. Thus, Misc. Application Nos.133 of 2015 and 234 of 2014 are to be allowed.

19. However, it is hereby made clear that the order dtd. 09/07/2014 in Bail Application No.20 of 2014 was relying upon the affidavit of undertaking (Exh.3) and was conditional with directions to strictly adhere the same. As it is observed that the accused-Rajesh failed to follow the terms and conditions of the undertaking (Exh.3),

the right of bail of accused on general grounds cannot be taken away. The reason put forth for the failure of compliance of undertaking (Exh. 3) have no impact on the rights of the accused-Rajesh to seek bail on the other grounds available in law. Hence, liberty is required to be given to accused-Rajesh to apply for regular bail afresh, after surrender to this Court.

20. Hence, for the discussion and reasonings above, following order is passed.

: O R D E R :

1. Misc. Application Nos.133 of 2015 and 234 of 2014 are allowed.
2. Bail granted to accused-Rajesh Budhalal Mehta in Bail Application No.20 of 2014 vide order dtd.09/07/2014, stands cancelled in terms of condition No.4 of the bail order dtd. 09/07/2014.
3. Accused-Rajesh Mehta is directed to surrender before this Court.
4. Bail bonds furnished by the accused-Rajesh Mehta in view of the order dtd.09/07/2014 in Bail Application No.20 of 2014 stands cancelled.
5. Accused-Rajesh Mehta is at liberty to apply afresh for grant of bail as per the provisions of law.
6. Misc. Application Nos.133 of 2015 and 234 of 2014 stand disposed of accordingly.

Dt. 01/09/2016

(Ajay Dinode)
Special Judge, M.P.I.D. Act &
Additional Sessions Judge,
City Civil & Sessions Court,
Gr. Bombay

Dictated on : 01/09/2016
Typed on : 01st & 02/09/2016
Signed on : 03/09/2016

“ I affirm that the contents of this PDF file judgment/order are the same, word to word, as per the original judgment/order.”

Name of Steno : - Mrs. M. M. Salgaonkar (Stenographer – H.G.)

Name of the Judge : - H.H.J. Shri Ajay Dinode, C.R.No.33

Date of pronouncement :- 01st September, 2016
of Judgment/order

Judgment signed by the
P.O. on :- 03rd September, 2016

Judgment uploaded on :- 03rd September, 2016