

## **MPID Court Cancels Bail of NSEL defaulter of Rs 719.21 Crs**

Kailash Aggarwal was arrested by EOW, Mumbai Police on 11.08.2014 and was released on bail by the Hon'ble MPID Court vide order dated 11.09.2014 with the condition that he shall not alienate or dispose-off any of his movable or immovable properties without the permission of the MPID Court. In utter disrespect of the bail order, Kailash Aggarwal disposed-off some of the attached assets without the permission of the MPID Court. Eventually EOW, Mumbai Police filed a bail cancellation application against Kailash Aggarwal and informed the Hon'ble MPID Court about his misdeeds. Being convinced that Kailash Aggarwal violated the bail condition imposed upon him, the Hon'ble Court cancelled the bail granted to him. By its order dated 02.12.2020, the Hon'ble Court has directed Kailash Aggarwal to surrender failing which the Hon'ble Court would be issuing Non Bailable warrant against him.

Kailash Aggarwal is one of the key accused in the NSEL matter. His company Ark Imports Pvt Ltd is one of the largest defaulter in NSEL with an outstanding default of Rs 719.21 Crs. Kailash Aggarwal had fraudulently acquired another passport in some other identity and it was cancelled by RPO Ludhiana and the matter is under investigation. His son, Anubhav Aggarwal, another key accused in NSEL matter had fled the country and has recently been arrested by the Interpol in Abu Dhabi. The EOW, Mumbai Police is trying to extradite Anubhav Aggarwal and has also sent the extradition plan to the Centre.

Here, it is pertinent to note that NSEL is providing all necessary support to the investigation agencies. NSEL has not left any stone unturned and has been trying to recover the amounts from the defaulters and has been steadily progressing in the matter. The decrees obtained against the defaulters are under execution across various Courts in the country. Once the Court approves the execution, the properties of the defaulters would be auctioned thus enabling recovery of money from the defaulters.

**IN THE COURT OF SPECIAL JUDGE, MPID FOR GR.BOMBAY,  
AT BOMBAY**

**MISC. APPLICATION NO.802 OF 2020  
IN  
MPID SPECIAL CASE NO. 1 OF 2014**

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

... Applicant.

Vs.

Kailash Baluram @ Baburam Aggarwal  
Age: 65 years.  
R/a: 3301, Gurdev Nagar, Ludhiana-14100.

... Respondent

Learned SPP Mr. Sunil Gonsalves for State.  
Learned Advocate Mr.Punalekar for the Respondent.

**CORAM : HIS HONOUR THE SPECIAL JUDGE  
SHRI. Dinesh E. KOTHALIKAR (C.R.NO.25)  
DATED : 2<sup>nd</sup> December, 2020.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)  
ORAL ORDER**

. This is an application for cancellation of bail on the ground of breach of condition, by the accused who was arrested in Crime No.89 of 2013 registered with EOW, Unit V, Mumbai.

2. The respondent was arrested on 11.08.2014 in the aforesaid crime. While he was under detention by an order dated 11.09.2014, my learned predecessor was pleased to allow the bail application bearing B.A. No.27 of 2014 with certain conditions. While allowing the bail application of the accused, my learned predecessor put

up Four conditions and one of the conditions was that the respondent shall not alienate or dispose off, in any manner, any of his movable or immovable properties without the previous permission of the Court.

3. According to the prosecution, in violation of the order passed by the court, the respondent has flouted the condition of bail by selling the properties which were owned by Genex Infra-tech Pvt. Ltd. The copies of said sale deeds have been placed on record at Collectively. The Government of Maharashtra has attached the immovable properties belong to ARK Imports Pvt. Ltd. as well as Genex Infra-tech Pvt. Ltd. vide Notification dated 12.03.2015. Upon consent given by the respondent, the attachment was made absolute vide order dated 04.03.2016.

4. The applicant has further come with the case that Genex Infra-tech Pvt. Ltd., through one of its directors had filed a Writ Petition before the Hon'ble Punjab and Haryana High Court. In the said petition an order dated 09.06.2016 was passed and directions to maintain status-quo in respect of the immovable properties was passed. However, said writ petition was withdrawn by one of the directors of Genex Infra-tech Pvt. Ltd., on 29.08.2019. thereafter, the respondent had executed sale deeds dated 22.11.2019 and 30.01.2020 respectively.

5. Thereafter, other director of Genex Infra-tech Pvt. Ltd., had approached the Hon'ble High Court alleging that fraud had been committed by the said director while filing the application for withdrawal of the petition. Accordingly, the Hon'ble High Court vide order dated 06.01.2020. according to the applicant despite the orders passed by the Hon'ble Punjab and Haryana High Court and this court,

the respondent had entered into the sale transaction. Hence, it is prayed for cancellation of bail.

6. The application has been objected by the respondent by filing reply Exh.5.

7. The application has been objected on the ground of jurisdiction. It is claimed that the provisions of the MPID Act are not attracted and as such the jurisdiction to try the offence lies with the learned Metropolitan Magistrate.

8. It has been further submitted that in view of the fact that the application for discharge is sub-judice, it is necessary to be heard before deciding present application. It has been averred that since the Hon'ble High Court has struck down the Notifications by which the properties of the firm namely 63 Moons Technologies Ltd.

9. It has been further contended that the sale of the properties alleged by the applicant are that of company and the respondent has not sold his movable or immovable properties. Therefore, it is claimed that the respondent has not committed breach of the conditions.

10. It has been further claimed that there is absolutely nothing on record to indicate that the condition imposed upon the respondent was conveyed to him or that it was admitted by him.

11. According to the respondent, he was also arrested by the Enforcement of Directorate and the Hon'ble High Court had granted bail to him. Therefore, he claims that the bail order passed in the present

crime cannot be relied upon.

12. It has been claimed that the respondent is aged person suffering from many ailments including Parkinson Disease. Hence, it is prayed for rejection of the application.

13. I have heard the submissions made by learned S.P.P. Mr. Sunil Gonsalves and learned advocate Mr. Sanjeev Punalekar.

14. After filing the reply, learned advocate for the respondent has placed on record affidavit of the respondent alongwith application Exh.14. In the said affidavit the respondent has tried to blame his nephew and alleged that the EOW and ED by joining hands with said Rohit Gupta are trying to grab the properties of the respondent.

15. Upon perusal of the reply and affidavit filed by the respondent it would reveal that the respondent has not disputed that he has sold the properties mentioned in the sale deeds Exh.B-Collectively. However, he has come with the case that he did not know about the order passed by the Court and therefore, he cannot be held responsible for committing breach of the condition. In this regard, I would like to mention here that, the condition was imposed upon the application for bail, which was filed by the respondent. Meaning thereby, he was party to said proceeding. In this view of the matter, it cannot lie in the mouth of the respondent that he was unaware about the condition imposed by the court and that it was not conveyed to him. Hence, the explanation offered by the respondent sans merit and therefore, the same is liable to be discarded.

16. The next point raised by the respondent is that the condition imposed by the court states that the respondent was directed that he shall not alienate or dispose of in any manner any of **HIS** movable or immovable properties without previous permission of the Court. However, the sale of properties alleged by the EOW were the properties belonged to the Company, i.e. a distinct legal entity. Hence, it is claimed that the sale transaction cannot be said to be violation of the condition of bail. In this regard, the learned S.P.P. Mr. Gonsalves has rightly submitted that the respondent was all along prosecuted being the director of the Genex Infra-tech Pvt. Ltd., and he was not at all prosecuted or arrested in his personal capacity. There cannot be second opinion that the Company is a distinct legal entity. However, the fact remains that the respondent, being the director of the Genex Infra-tech Pvt. Ltd. was prosecuted and that upon his arrest being the director of said company, he was directed that he shall not dispose of any movable or immovable properties. If the interpretation as sought for by the respondent is accepted, in that case it would amount to give premium to such directors. Therefore, I do not find merit in the objection sought to be raised by the respondent.

17. It is worthy to be noted that the properties were attached by the Government of Maharashtra under Notification dated 12.03.2015. The copy of Roznama dated 04.03.2016 states that the attachment was made absolute as it was consented by the respondent. The record further reveals that one of the directors of the Genex Infra-tech Pvt. Ltd. had filed CWP No.12363 of 2016 against the State of Maharashtra and that in the said Writ Petition the Hon'ble Punjab and Haryana High Court had passed an order dated 09.06.2016 to maintain

status-quo. At the same time the Hon'ble High Court had further given direction to the Genex Infra-tech Pvt. Ltd. that it shall also not alienate or dispose off the properties or create any incumbrance in the property mentioned in the Notification without prior permission of the court. The learned SPP has submitted that the Writ Petition was withdrawn on 29.08.2019, by one of the directors of the Genex Infra-tech Pvt. Ltd.. However, vide order dated 06.01.2020, the order dismissing the petition as withdrawn was recalled and a strict status-quo was ordered to be maintained over the property /assets of the Company.

18. From the above state of affairs it would reveal that during the period of 29.08.2019 to 06.01.2020 only the order to maintain status-quo did not exist. Upon perusal of the sale deeds it would reveal that the sale deeds have been executed on 29.01.2020 and 22.11.2019 respectively. Therefore, without hesitation it can be said that the sale deed dated 29.01.2020 was executed, though the respondent was also directed to maintain status-quo. Additionally, I would like to add that once the property was attached by the Government and that the said attachment was made absolute, in that case the property vests with the Competent Authority and as such the respondent had no power or authority to dispose it off. Considering all these aspects, it can be said that the transaction of sale entered into by the respondent were done by him violating the condition which was imposed upon him by my learned predecessor.

19. In the affidavit Exh.14 the respondent has tried to blame his nephew and alleged that said Rohit Gupta by joining hands with EOW and ED was trying to grab the properties of the respondent. Even

if it is accepted that said Rohit Gupta by joining hands with the EOW and ED was trying to grab the properties of the respondent, in that case also since the properties were attached by the EOW and the attachment was made absolute as per the order of the Court, in any case the properties would not go to said Rohit Gupta as the same vest with the Competent Authority, who has nothing to do with either the EOW or ED. Considering this aspect I do not find merit in the contention raised by the respondent.

20. So far as the objection as to jurisdiction is concerned, under Section 439 (2) of the Code a High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody. In this view of the matter there is no substance in the objection raised by the learned advocate for the respondent.

21. The learned advocate for the respondent has made a feeble attempt to submit that the Hon'ble High Court, while deciding the Writ Petition filed by 63 Moons Technologies Ltd., has held that the provisions of the MPID Act are not attracted and as such the application for discharge has been submitted by the respondent and that till the time said application is decided, present application cannot be decided. In fact, present application is based on the contention that the respondent has committed breach of the condition imposed by the court upon the respondent, when he was released on bail. Therefore, at this stage this court is required to only concentrate on the said aspect, by stretch of imagination it cannot be said that this court is required to look into the matter as to existence of grounds for proceeding against the



accused. Therefore, the contention of the respondent needs to be turned down.

22. Having carefully considered the rival submissions made by the learned Counsel for the parties, I am of the considered opinion that since it has been established that the accused has committed breach of the condition imposed by the Court while releasing him on bail, then his bail must be cancelled. It is true that after grant of bail, the respondent may not have tampered with the evidence or delayed the trial but he cannot be allowed to take advantage of his own wrong and as such that would not be a ground to reject the prayer made by the applicant.

23. It is settled law that while granting bail the Court has to take into consideration several factors viz., nature of offence, antecedents of offenders, their possibility of indulging themselves in similar type of activities maintaining peace, law and order etc., and strict conditions are imposed so that the accused person should be on his guards that if he commits breach of any of the conditions, then his bail may be cancelled. And, inspite of imposing conditions, if any accused commits breach of the condition imposed while releasing him on bail and if it is found by the Court that he has committed such breach, then in my considered opinion the Court has to cancel the bail of such accused.

24. Lastly, the respondent has putforth contention of his ill health. According to him he is suffering from various ailments and therefore, the bail granted in his favour may not be cancelled. It is true

that the respondent is an old aged person. However, it appears from the record that the a statement was made on behalf of the accused, which the respondent does not only want to resile, but in violation of the same he has disposed off the properties. At this juncture, it would be just to make a reference to the aims and object to enact the MPID Act. The MPID Act, 1999 came into to protect the interest of depositors of the financial establishments and matters relating thereto. The statement of objects and reasons of the MPID Act, 1999 and the Ordinance preceding the same, reads as under:-

"There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive interest rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on public. As such deposits run into crores of rupees it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra".

25. Considering the object behind enacting the Act and the fact that despite the condition was imposed by this court upon the respondent and the order to maintain status-quo was in existence, the respondent had disposed off the properties, the mere fact that the

respondent is suffering from ailments cannot be said to be helpful to him.

26. Before parting, it needs to be noticed that on 11.09.2020, this court had directed the respondent to remain present on 25.09.2020, but he did not. On 25.09.2020, this court had passed a specific order that on 19.10.2020, if the respondent remains absent, that will be sufficient reason for cancellation of the bail granted in his favour, but still the respondent remained absent. Thereafter, on 19.10.2020, instead of following the order he has tried to play a trick stating that present application be tagged with application for discharge. He did not appear on 03.11.2020 and 06.11.2020. Thereafter, the matter was adjourned to 07.11.2020, 09.11.2020 and 25.11.2020, but the respondent has remained absent. Not only this despite this Court has observed that the respondent would appear before the Court on the date of passing the order, but today also he is absent. He has submitted application Exh. 17 today and requested this Court to interact with him through Video Conferencing. This shows that the respondent wants to dictate the terms of the manner in which the proceeding shall be proceeded with, which is impermissible. This conduct on the part of the respondent speaks volume. Considering all these aspects, there is no hesitation to conclude that the respondent is habituated to flout the orders/directions of the court. Therefore, he is not entitled to remain on bail.

27. In view of the above discussion, I conclude that the applicant has established that respondent has violated the order passed by my learned predecessor by which he was directed that he shall not dispose of any movable or immovable properties. Therefore, I proceed to pass following order;

**:ORDER:**

1. Misc. Application No. 802 of 2020 is allowed.
2. The bail granted to the respondent in BA No.27 of 2014 is hereby cancelled, as he has violated the condition imposed upon him.
3. The respondent shall surrender forthwith.
4. If the respondent fails to surrender forthwith, issue Non Bailable Warrant against him for securing his presence and notices to his sureties.



**(Dinesh E. Kothalikar)**  
**Special Judge, MPID**  
**City Civil and Sessions Court,**  
**For Greater Bombay**

**Date : 02/12/2020.**

Dictated on : 02.12.2020.  
Typed on : 02.12.2020.  
Signed on : 02.12.2020.

: 12 :

**“ CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”**

**UPLOAD DATE AND TIME : 03.12.2020 AT 11.23 p.m**  
**NAME OF STENOGRAPHER :Mrs. Prajakta K. More**

<b>NAME OF THE JUDGE</b>	<b>HHJ SHRI.D.E.KOTHALIKAR (C.R.No.25)</b>
<b>Date of Pronouncement of Order</b>	<b>02/12/2020</b>
<b>Order signed by the PO. On</b>	<b>02/12/2020</b>
<b>Order uploaded on</b>	<b>03/12/2020</b>