

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

**MISC. APPLICATION NO.273 OF 2016**

**IN**

**BAIL APPLICATION NO.36 OF 2014**

**IN**

**C.R.NO.89 OF 2013  
(MPID CASE NO.01 OF 2014)**

**State of Maharashtra** )  
Through Economic Offences Wing, )  
Special Investigation Team, New Building, )  
3<sup>rd</sup> Floor, Commissioner of Police )  
office compound, Mumbai – 400 001 ) .. **Applicant**

**Versus**

**Mr.Ranjeev Agarwal** )  
Aged about 49 years residing at )  
R/o.631/3, Huda, )  
Kurukshetra, Haryana – 136 118 ) .. **Respondent**  
(Orig.Accused)

**Learned SPP Mr.A.B. Avhad for State/Respondent.**

**None for the Respondent/Orig.Accused.**

**Learned Advocate Mr.Karnik for the Original Informant.**

**Learned Advocate Ms.Zhunzhuwala for NSEL.**

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

**DATE : 20<sup>th</sup> February, 2017  
(Court Room No.33)**

**: ORDER :**

State through EOW, SIT, Mumbai filed this application for cancellation of conditional bail granted to the accused Ranjeev Agarwal vide order dtd.10/11/2014.

2. Accused – Ranjeev Agarwal was arrested by EOW on 21/10/2014 in Crime No.89 of 2013. The charge-sheet in respect of some of the accused in C.R.No.89 of 2013 is filed and also supplementary charge-sheets were filed. However, the further investigation in the matter is still in progress.

3. Accused-Ranjeev Agarwal was arrested in connection of his involvement with the borrower company namely “M/s. P.D. Agro Processors Pvt. Ltd.” having liability of about Rs.633.98 Crores to National Spot Exchange Limited (In short, NSEL). Accused-Ranjeev Agarwal preferred Bail Application No.36 of 2014 and during hearings, he gave an undertaking to deposit Rs.2,00,000/- (Rs.Two Lakh) per month while granting him bail on 10/11/2014. This Court relied on the undertaking given by the accused - Ranjeev Agarwal and granted bail on conditions. However, the accused- Ranjeev Agarwal failed to comply with the undertaking, which was given by him for securing bail and failed to deposit Rs.2,00,000/- every month. Hence the prosecution is claiming that the accused - Ranjeev Agarwal committed willful default of the conditions of bail and bail is liable to be cancelled.

4. Heard learned SPP for the State, EOW, SIT, Mumbai. He supported the contentions in the application and claimed that the

accused - Ranjeev Agarwal committed the breach of condition No.5 in the bail order dtd.10/11/2014 and accordingly his bail is liable to be cancelled.

5. This Court issued the show cause notice against the accused- Ranjeev Agarwal calling his explanation as to why his bail shall not be cancelled. Accused - Ranjeev Agarwal was served in view of the service affidavit (**Exh.5**) whereby the postal packet returned with remark "intimation posted/not claimed". As the service by post on the proper address of the accused is returned with the postal remark "intimation posted/not claimed", in view of the provisions of Section 27 of the General Clauses Act 1897, the service of the accused- Ranjeev Agarwal is complete. In-spite of service, accused- Ranjeev Agarwal failed to appear and failed to file reply. Thus, on 20/01/2017, this Court passed an order to proceed without reply of the accused- Ranjeev Agarwal.

6. The original informant-Mr.Pankaj Saraf filed the intervention application, which was allowed by this Court. Learned Advocate for the original informant supported the contentions of EOW and claimed that as the accused - Ranjeev Agarwal willfully defaulted the conditions of bail, his bail is liable to be cancelled.

7. In the meanwhile NSEL filed intervention application at **Exh.3**, which was allowed and permission to intervene was granted. Learned Advocate for NSEL argued in support of the contentions of EOW and claimed that the bail is liable to be cancelled.

8. From the rival submissions and from the records of the

case, following points arose for my determination and I answer them for the reasons supported as under,

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the accused - Ranjeev Agarwal committed the willful default of the bail condition and undertaking given by him while securing the bail in Bail Application No.36 of 2014 dtd. 10/11/2014?	.. .. Yes
2.	Whether bail granted to the accused- Ranjeev Agarwal dtd.10/11/2014 is liable to be cancelled?	.. .. Yes
3.	What order ?	.. .. Application is allowed.

**: REASONS :**

**: As to Point No.1 :**

9. From the rival submissions and perusal of the bail order dtd.10/11/2014 in Bail Application No.36 of 2014, it reflects that this Court has relied on the undertaking given by the accused- Ranjeev Agarwal to deposit Rs.2,00,000/- per month in the Court in NSEL Escrow Account with Axis Bank and Court has also relied on the consent given by the accused- Ranjeev Agarwal to sell his property for the repayment of the dues. The observations of this Court in para 9 of the order reads as under,

*“9. More over, the applicant has filed on record Form No.32, wherein it is mentioned that the applicant has resigned on 30/09/2011 i.e. much prior to his arrest. Applicant has also undertaken to deposit an amount of Rs.2 Lacks per month and has also given an oral undertaking that he is ready and willing and has no*

*objection if his seized properties are put to auction towards the payment of the due amount against him. The applicant has also paid an amount of Rs.2.15 crores till date and has shown his bonafide to repay the amount due against him”*

In view of the observations above, it prima facie reflects that this Court has relied on the undertaking given by the accused- Ranjeev Agarwal and the consent about the auction sale of the attached properties.

10. As the bail was granted to the accused - Ranjeev Agarwal relying upon his undertaking, the condition No.5 was specifically incorporated in the bail order with clear observation that default in compliance of the condition No.5 shall be termed as breach of the bail condition. Condition No.5 of the bail is reproduced as under,

*“5. that the applicant shall strictly adhere to undertaking given by him and shall continue to deposit Rs.2 lacks every month in the NSEL ESCROW account with Axis bank failing which shall be termed as breach of the bail condition.”*

11. Therefore in view of the observations of this Court in the bail order and in view of the specific condition No.5, which makes it clear that the default in compliance of condition No.5 will be treated as breach of the condition, the accused has clear notice and understanding of the fact that if he failed to pay Rs.2,00,000/- every month, such default will be treated as the breach of bail condition. In spite of such knowledge, accused- Ranjeev Agarwal failed to comply the condition No.5 of the bail order. The contention of the State/EOW is not countered by the accused- Ranjeev Agarwal. Nothing before the Court to show that the accused has tried to comply the condition of the bail. No justifiable and satisfactory reason is put forth for non-compliance of the condition No.5 of the bail order. Accused – Ranjeev Agarwal

remained absent in spite of the service of the notice. Therefore in the facts and circumstances of the case, it is clearly brought on record that the accused- Ranjeev Agarwal has committed the willful default of the bail condition No.5 having of knowledge about the same. Thus, point No.1 is answered accordingly.

**: As to point No.2 :**

12. As per the provision of Section 437(5) and Section 439(2) of the Code of Criminal Procedure, 1973 (In short,CrPC), Court is empowered to cancel the bail, which is already granted to any accused under the provisions of 437 of CrPC or Section 439 of CrPC as the case may be. The only requirement prior to cancellation of bail, which was already granted is that the accused must be heard. In the case at hand, notice was issued to the accused- Ranjeev Agarwal. However, in spite of the notice he failed to appear before the Court. Thus, the mandate of law is complied in the case at hand. From the discussion and reasoning to point No.1 above, the State-EOW brought on record that the accused- Ranjeev Agarwal committed the willful default of the condition No.5 in the bail order dtd. 10/11/2014 passed in Bail Application No.36 of 2014, and failed to deposit the amount of Rs.2,00,000/- per month. As the non-compliance of such condition was held to be a breach of bail condition, accused- Ranjeev Agarwal committed the breach of the bail condition, which invites the action by this Court under Section 437 (5) or under Section 439 (2) of CrPC. Therefore in the facts and circumstances of the case, the bail granted to the accused- Ranjeev Agarwal is liable to be cancelled and point No.2 is answered accordingly.

**: As to Point No.3 :**

13. For the discussion and reasoning above to point Nos.1 and 2, following order is passed.

**: O R D E R :**

1. Misc.Application No.273 of 2016 is allowed.
2. The bail granted to the accused- Ranjeev Agarwal in Bail Application No.36 of 2014 vide order dtd.10/11/2014 in Crime No.89 of 2013 for the offences punishable under Sections 409, 465, 467, 468, 471, 474, 477-A r/w Section 120-B of the Indian Penal Code, 1860 r/w Section 3 of the Mharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 is hereby cancelled.
3. The bail bond executed by the accused- Ranjeev Agarwal is hereby forfeited to the Government.
4. Accused- Ranjeev Agarwal be arrested and be produced before this Court for committing him to the custody.
5. Misc. Application No.273 of 2016 stands disposed of accordingly.

Dt.20/02/2017

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

Dictated on : 20/02/2017  
Typed on : 22/02/2017  
Signed on : 22/02/2017

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

On 23/02/2017 at 10.45 a.m.

UPLOAD DATE AND TIME

Mrs. M. M. Salgaonkar  
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J. Shri Ajay R. Dinode, C.R.No.33
Date of Pronouncement of JUDGMENT/ORDER	20/2/2017
JUDGMENT/ORDER signed by P.O. on	22/02/2017
JUDGMENT/ORDER uploaded on	23/02/2017



