

**Bail of Mr. Gagan Suri, Director of NSEL's Defaulter M/s. Yathuri Associates,
granted by Hon'ble MPID Court**

Mr. Gagan Suri is the Director of Yathuri Associates, one of the defaulter in NSEL with an outstanding amount of Rs. 399.60 Crores due & payable to NSEL as on 31st July 2013.

Mr. Gagan Suri was arrested in Crime No. EOW 89 of 2013 & was granted bail by Hon'ble MPID court order dated 10/11/2014 in Bail Application No.39 of 2014 on condition that he shall strictly adhere to the undertaking given by him, and instead of first two installments of Rs.5 Crores, mentioned by him in MA No.67 of 2014, he would deposit Rs.4 Crores and shall continue to deposit the amount of further installments as mentioned and undertaken by him in MA No.67 of 2014, in the NSEL ESCROW account with Axis bank, the installments of which to be started after 30 days if the release of the applicant from jail, falling which shall be termed as breach of the bail condition no 5 as per the **Criminal Misc. Application no. 135 OF 2015 order dated 25/04/2017.**

Instead of fulfilling the above bail condition, Mr. Gagan Suri filed Criminal Misc. Application No.78 of 2015 for modifications of the said condition. Due to the new application, EOW also filed an application being Criminal Misc. Application No.135 of 2015 for cancellation of his bail.

The learned Judge, M.P.I.D. Court on 24/04/2017, dismissed the application of Mr. Gagan Suri for modification of Condition No.5 and allowed the application filed by EOW for cancellation of bail and directed Mr. Gagan Suri to surrender before the Court on 03/06/2017.

Mr. Gagan Suri challenged the above orders both dated 25/04/2017 passed in application for cancellation for bail (Cri. Misc. Application No.135 of 2015) and application for modification of condition No.5 (Cri. Application No.78 of 2015) by filing another two applications nos. Criminal Application no. 293 of 2017 with Criminal Application no. 544 of 2017 before the Hon'ble Bombay High Court.

By order dated 06/06/2017, Hon'ble Bombay High Court granted interim protection to the Applicant and extended the time to surrender before the Designated Court saying that the said interim order has been extended from time to time.

Now since the EOW has filed the Chargesheet, Mr. Gagan Suri requested before the Hon'ble Bombay High Court to withdraw these applications with liberty to file application for bail before the Trial Court & prayed in the application that the interim protection granted earlier be continued till the time he files the application for bail.

Accordingly, Hon'ble Bombay High Court vide order dated 13/10/2021 allowed the applications to be withdrawn & also allowed the interim relief granted on 06/06/2017 to be continued for a period of four weeks from the date of this order so as to enable the Applicant to file an application for bail before the Designated Court.

On 10/11/2021, the bail matter of Mr. Gagan Suri was taken on Hon'ble Bombay High Court board. The court informed that the hearing will take place only if Mr. Gagan Suri remains present in court & have asked EOW to take Mr. Gagan Suri into police custody till 24th November 2021. Against which Mr. Gagan Suri filed for interim protection which was rejected by the Hon'ble Bombay High Court and the next hearing is kept on 15/11/2021 for regular bail.

Further, Mr. Gagan Suri filed for bail in the MPID court informing that since EOW has submitted the chargesheet, there is no purpose to keep him in police custody. After hearing the matter, **Hon'ble MPID court order dated 23.11.2021** granted bail to Mr. Gagan Suri **on his depositing Rs. 20 Lakhs** as per the undertaking given by him in pursuant to the order passed in BA no 39 of 2014 dated 10/11/2014 and have asked him to follow the conditions as mentioned in the said order dated 23/11/2021.

Daily Status

City Sessions Court, Mumbai

In the court of : COURT 25 ADDL SESSIONS JUDGE**CNR Number** : MHCC020169742018**Case Number** : MAHA P I D 1999/0100005/2019The State of EOW **versus** M/s. NATIONAL SPOT EXCHANGE LTD. AND ORS.62**Date** : 23-11-2021

Business : SPP, Mr. Sunil Gonsalves for EOW is present. PSI Kadam, ASI Kadam attached to EOW unit is present. Advocate Mr. Ravindra Raghubanshi a/w Adv. Tiwari for accused present. F.R.S.R. the following order is passed below Exh.211 - ORDER 1. Application Exh.211 is hereby allowed. 2. The applicant Gagan Suri be released on his executing PB and SB of Rs.20,00,000/- (Twenty Lacs only) on his depositing the amount as per the undertaking given by him and in pursuant to the order passed in B.A. No.39 of 2014 dated 10.11.2014. 3. Needless to say that, the amount of Rs.21 Crores, which has been deposited by the applicant, in pursuant to the aforesaid undertaking is liable to be adjusted. 4. The applicant shall further observe the conditions imposed upon him by my learned predecessor as per the order dated 10.11.2014. 5. The applicant shall not misuse the discretion, which has been used in his favour. Matter is adjourned to 16.12.2021.

Next Purpose : SAYHEARING ON EXH.READY

Next Hearing Date : 16-12-2021

COURT 25 ADDL SESSIONS JUDGE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.293 OF 2017
WITH
CRIMINAL APPLICATION NO.544 OF 2017**

Gagan Suri ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

....

Mr. Rajendra Raghuwanshi i/b. Mr. Ratnesh Dube for the Applicant in both the applications.

Mr. Ajay Patil, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 13th OCTOBER, 2021.

P.C.:-

The Applicant, who was arrested in Crime No.EOW 89 of 2013 was granted bail by order dated 10/11/2014 in Bail Application No.39 of 2014. Condition No.5 of the said bail order is as under :

“5.that the applicant shall strictly adhere to undertaking given by him, and instead of first two installments of Rs.5 Crores, mentioned by him in MA No.67 of 2014, he should deposit Rs.4 Crores and shall continue to deposit the amount of further installments as mentioned and undertaken by him in MA No.67 of 2014, in the NSEL ESCROW account with Axis bank, the installment of which to be started after 30 days if the release of the applicant from jail, failing which shall be termed as breach of the bail condition. AND the

applicant shall also take back his cheque given by him and shall issue fresh post dated cheques of the amount mentioned in ANNEXURE 'A' of MA No.67 of 2014, except for first two installments instead of Rs.5 Crores the amount of cheque should be Rs.4 Crores, in the name of NSEL ESCROW account with Axis Bank, and shall see that none of the cheque should dishonour, failing which shall be termed as breach of the bail condition."

2. The Applicant had filed Criminal Misc. Application No.78 of 2015 for modification of the said condition. The State EoW had also filed an application being Criminal MISC. Application No.135 of 2015 for cancellation of bail. By two separate orders both dated 25/04/2017 the learned Judge, M.P.I.D. Act, Greater Bombay, dismissed the application for modification of Condition No.5 filed by the Applicant and allowed the application filed by the State through EoW for cancellation of bail and directed the Applicant to surrender before the Court on 03/06/2017. The Applicant has challenged these orders both dated 25/04/2017 passed in application for cancellation for bail (Cri. Misc. Application No.135 of 2015) and application for modification of condition No.5 (Cri. Application No.78 of 2015) by filing these two applications.

3. By order dated 06/06/2017 this Court (Coram: Prakash D. Naik, J.) had granted interim protection to the Applicant and extended the time to surrender before the Designated Court. Said interim order has been extended from time to time.

4. Learned counsel for the Applicant states that during the pendency of these applications charge sheet has been filed. He therefore seeks leave to withdraw the applications with liberty to file application for bail before the Trial Court. He prays that the interim protection granted earlier be continued till the time he files the application for bail.

5. In the light of above, applications are dismissed as withdrawn. Interim relief granted on 06/06/2017 to continue for a period of four weeks from the date of this order so as to enable the Applicant to file an application for bail before the Designated Court, which shall be decided by the Designated Court on its own merits.

(SMT. ANUJA PRABHUDESSAI, J.)

**BEFORE DESIGNATED COURT UNDER M.P.I.D. ACT AT
BOMBAY CITY CIVIL & SESSIONS COURT AT MUMBAI
CRIMINAL MISC. APPLICATION NO. 135 OF 2015**

IN

BAIL APPLICATION NO.39 OF 2014

MPID SPECIAL CASE NO. 01 OF 2014

(C.R. NO.89 OF 2013 LODGED AT EOW UNIT-V)

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

Versus

Gagan Sitaram Suri,]
M/s. Yathuri Associates]
101, GHS, 28, Mansadevi Complex,]
Sector – 5 Panchkula,]
Haryana – 134 114.].. **Applicant/accused**

Learned Spl. P.P. Mr. Avhad for State.

Learned Advocate Mr.Karnik for the Original Informant.

**Learned Advocate Mr. Raghuvanshi alongwith Advocate Mr. Tiwari
for applicant/accused.**

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

**DATE : 25th APRIL, 20167
(Court Room No.33).**

: ORDER :

By this application the State/EOW is claiming cancellation of conditional bail granted to accused Gagan Suri on 10.11.2014 in bail application no.39/2014.

Brief Facts;

2 The accused Gagan Suri was arrested by EOW on 21.10.2014 in MPID Case No.01/2014 in C.R.No.89/2013 for the offences punishable under sections 420-B, 409, 465, 467, 468, 471, 474 and 477-A of the Indian Penal Code r/w 3, 4 of Maharashtra Protection of Interest of Depositors Act (In short MPID Act). The accused Gagan has preferred bail application no.39/2014 under section 439 of the Code of Criminal Procedure and claimed his released on regular bail. The accused Gagan gave undertaking in M.A.No.67/2014, wherein he has given proposal for repayment of admitted liability of Rs.271 crores. He agreed to repay the admitted amount of Rs.271 crores in installments, as per annexure A in M.A No.67 of 201. He gave and relied upon the said undertaking at the time of hearing of bail application no.39 of 2014 and undertook to repay the amount in installment as per Annexure-A in M.A. No.67/2014. Relying on the said undertaking alongwith the other facts of the case, this Court granted bail to the accused Gagan on condition.

3 As per the condition no.5 of the bail order dated 10.11.2014 in bail application no.39/2014, this Court directed the accused Gagan that he shall strictly adhere to undertaking given by him, and to pay and deposit Rs. 4 crores in first two installments as

mentioned in undertaking given by him in M.A.No.67/2014, in the NSEL Escrow account with Axis Bank, the installment of which to be started after 30 days, after the release of the applicant from jail, failing which shall be termed as breach of the bail condition.

4 After release of the accused Gagan on bail, he has filed M.A.No.78/2015 on 03.03.2015 and claimed the modification of condition no.5 in order dated 10.11.2014 in bail application no.39/2014. The criminal misc. application No.78/2015 filed by the accused Gagan for modification of condition no.5 of the bail order is dismissed by this Court by passing order on 25.04.2017 i.e. today,

Contentions of EOW:-

5 The State/EOW claimed cancellation of the bail granted to accused Gagan on the ground that accused Gagan has played fraud with this Court in obtaining the bail in C.R.No.89/2013 in bail application no.39/2014. The accused Gagan along with others has cheated to the investors to the tune of Rs.5,600 crores, wherein the accused Gagan has committed fraud of Rs.424.64 crores. The accused Gagan admitted his liability and undertook to repay the amount in installments by giving undertaking in bail application No.39/2014. This Court accepted the undertaking given by the accused Gagan and accepted repayment schedule. The repayment schedule was for 18 months, in which admitted amount of Rs.271 crores was agreed to be repaid. The conditional bail was granted to the accused Gagan on the basis of affidavit filed by the accused before this Court. As per the condition no.5, the accused Gagan was directed to strictly adhere to his undertaking and repayment schedule. It was specifically directed by this Court to the accused Gagan that in case of breach of undertaking or failing to fulfill the repayment schedule, it shall be termed as breach of

the bail condition. In spite of such specific condition and direction, the accused Gagan has deliberately and intentionally failed to honour the said undertaking given by him.

6 As per the condition no.5 of the bail order and repayment schedule given by the accused Gagan, in bail application no.39/2014, the amount of Rs.30 crores was required to be deposited by him till end of March 2015. However, the accused Gagan has deposited only Rs.6 crores in NSEL Escrow till March 2015. Thereafter, he has not deposited any amount as per the schedule and undertaking given by him. Therefore, it reflects that the accused Gagan secured the bail from this Court by giving false assurance and undertaking, which was never intended to be fulfilled. The accused Gagan violated the condition of the order of the bail. It amounts to abuse the process of law. Therefore, in the facts of the case, as the accused Gagan has committed breach of condition of bail order dated 10.11.2014, his bail is liable to be cancelled.

7 The learned Spl.P.P. for EOW/State has argued accordingly and claimed that there are no circumstance put forth to justify default in repayments as per schedule and undertaking. Thus, failure of repayment as per the schedule and failing to observe to undertaking appears intentional and deliberate. Thereby the bail granted to the accused Gagan is liable to be cancelled.

Contentions of the accused Gagan

8 The accused Gagan Suri strongly opposed the application by filing detail reply. It is contended by him that already his properties

were attached as per the provision of MPID Act. There is dual attachment of Investigating Authority and Enforcement Directorate by provisional order dated 31.12.2014, which was subsequently, confirmed on 28.05.2015. His various bank accounts have been freezed by EOW. Therefore, it becomes very difficult for him to make any sort payment as per the schedule. Further NSEL obtained decree on admission in suit no.173/2014 filed before the Hon'ble High Court and also filed Execution Proceeding (L) No.865 of 2015. As per the directions of the Hon'ble High Court, he has given necessary disclosure of his properties before the Court on 08.06.2015. He has sole dwelling house in his possession and occupation. He has to recover various amounts from the other parties for which already suits are filed before the Competent Civil Court. He has already filed M.A. No.78/2015 for modification of bail condition no.5.

9 In addition affidavit of reply, it is claimed by the accused Gagan that the undertaking and assurance of repayment was given with bonafide intention and he was intended to repay the agreed amount of Rs.271 crores. Undertaking was given on the assurance from the Trading Firms from whom he has to collect amount and thereby schedule of repayment was given. Those firms have agreed to repay his amount in installment basis. But, those firms failed to make the payments as per the agreement. He has filed Civil Suit against those firms on the basis of settlement deed. The civil suits are pending.

10 The accused Gagan further contended that on 22.12.2015 a notice was issued by State Bank of India to Rahul Sales Pvt. Ltd. under section 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, to deposit the

amount of Rs,21,55,80,609/- with interest and costs. Thereafter the public notice under section 13(4) of the SARFAEST Act was again issued by the State Bank of India on 19.03.2016 in the News Paper. He has made representation against the said notices and informed the authorities that the properties are already attached by this Court under MPID Act. He has also filed an interim application no.1148/2016. He has also took steps by filing IA No.1148/2016 with prayer of release of the properties for repayment of the liability in this case.

10 The accused Gagan further claimed that undertaking was given on the basis of Settlement Agreement with his debtors, However, has debtors committed breach of the agreement and he was avoided for making repayments. Now the properties are seized and attached by the bank and therefore, he could not sell the properties to recover the amount. Thus, he has taken all steps to secure and protect the properties attached by the Court. Only because he is on bail, he was able to take necessary steps to protect the properties. The repayment is delayed due to unavoidable circumstances. He cannot be faulted for the same.

11 In addition to it, the additional affidavit is filed giving further undertaking that he will assist the recovery of money by auction sale of property of Naraingarh Sugar Mills Ltd. and three commercial properties of Raul Sales Ltd. He will deposit the amount received by him in Civil Suits. He will take necessary steps to protect the properties for it realization. If his bail is cancelled, he wont be able to take proper medical assistance and it will affect his health condition.

12 The learned advocate for the accused Gagan Suri argued at

length. He argued that in the matter, it appears that undertaking in M.A. No.67/2014 was given when accused Gagan was in custody. The record reflects that due to arrest of accused Gagan and attachment of his property, he was not able to fulfill the condition and the repayments schedule, as per the undertaking. Non fulfillment of repayment of schedule is not intentional. The record shows that all possible steps taken by the accused Gagan to protect the interest of investors. The accused Gagan is ready to assist for recovery of amount by realization of assets. The accused is suffering from health problems and his case be considered sympathetically. In view of bail order of co-accused Mr. Jignesh Shah, wherein main accused was released on bail without any condition, non fulfillment of the condition by the accused Gagan Suri cannot be taken seriously. The exceptional circumstances are required for cancellation of bail. No such exceptional circumstance is been fulfilled to cancel the bail, which is already granted. The accused challenged his implication under the provisions of MPID Act by filing Writ Petition. The said Writ Petition is still pending.

13 The learned advocate for the accused Gagan further relied on judgment of the Hon'ble Supreme Court in the matter of **Biman Chatterjee V/s. Sanchita Chatterjee and another reported in AIR 2004 S.C.1699** and placed on record compilation of his documents to show the bonafide of accused Gagan. He further invited the attention of this Court to the order passed by the Hon'ble High Court in Bail Application No.1263/2014. The learned advocate for the accused Gagan Suri further relied on judgment of the Hon'ble Supreme Court in the matter of **Dolat Ram and others V/s, State of Haryana reported in (1995)1 SCC 349** and the judgment of the Hon'ble Supreme Court in the matter of **Bhagirathsinh Judeja V/s. State of Gujarat reported in**

AIR 1984 S.C. 372. Relying on all the above judgments above and materials in support, he argued that no case is made out for cancellation of bail.

Contentions of the original informant/investor.

14 The original informant Mr. Pankaj Saraf is allowed to intervene in view of order below application Exh.2. The learned advocate Mr. Karnik for the original informant argued that from the facts of the case, it is case of intentional breach of condition is of bail order. The role of the accused Gagan differs from the role of the accused Jignesh Shah. There was no undertaking given by accused Jignesh Shah to deposit any amount. However, the accused Gagan has admitted the liability of repayment of Rs.271 crores and gave undertaking and schedule of repayments. The record reflects that the accused Gagan Suri defaulted the schedule of repayment and failed to observe the condition no.5. The applicability of MPID Act is upheld by the Hon'ble High Court. It is the case of the admitted liability of Rs.271 crores huge amount. It is the case of voluntarily undertaking given by the accused Gagan Suri and willful default of the same. The breach of the condition of the bail order itself is the exceptional circumstance to cancel the bail. Therefore, the learned advocate Mr. Karnik argued accordingly and claimed to allow M.A. No.135 of 2015 and to cancel the bail granted to the accused Gagan Suri.

15 Heard the learned counsel for respective parties. Perused records and proceedings. Perused documents filed by the parties and order passed by this Court in bail application no.39 of 2014.

16 From the rival submissions, the following points arose for my determination and my findings thereon with reasons are as follows :

Sr. No.	POINTS	FINDINGS
1.	Whether the accused Gagan Suri committed willful default/breach of condition no.5 of the bail order dated 10/11/2014, imposed in bail application no. 39/2014 ?	Yes
2	Whether bail granted to accused Gagan Suri in bail application no.39/2014 dated 10.11.2014 is liable to be cancelled ?	Yes
3.	What order ?	As per final order

REASONS

As to Point no.1 :

17 From the rival submissions and the contentions of the parties, it undisputed position on record that this Court has imposed condition no.5 on accused Gagan Suri at the time of granting of bail and it was specifically and clearly observed therein that breach of condition no.5 will be treated as breach of condition of bail. It is also not in dispute that condition no.5 in the bail order was incorporated on the basis of undertaking given by the accused Gagan at the time of hearing of bail application.

18 According to accused Gagan, he was granted bail on merits

and not on the basis of undertaking given by him. However, plain reading of the order dated 10.11.2014 in bail application no.39/2014 clearly reflects that this court heavily relied on undertaking given by accused Gagan. There are clear findings and observation of accepting undertaking given by the accused Gagan in para no.9 of the bail order. Further, imposing of the condition no.5 in the bail order itself implies that bail was granted to accused Gagan relying on undertaking given by him. It was made specifically clear that breach of the undertaking shall be termed as breach of the bail condition. Thus, the wordings, findings, observations and the terms of condition no.5 of bail order in makes apparently clear that it is not case of release of accused on merits alone.

19 The undertaking and the repayment schedule Annexure-A was heavily relied upon by this Court at the time of granting of bail to accused Gagan in Bail Application No.39/2014. The accused Gagan was well aware about the imposition of condition no.5, which is in clear terms. The accused Gagan allowed imposition of condition no.5 in the order in Bail application no.39/2014 and has not objected the said condition. This conduct of the accused Gagan makes it clear that he gave undertaking voluntary. The order itself makes it clear that voluntary undertaking and the oral statement by the learned counsel for the applicant, were made at the time of hearing of bail application only after the instruction from the accused. Therefore, accused has every knowledge about the condition likely to be imposed and its legal consequences in case of failure of condition.

19 The learned advocate for the accused has claimed that there are unavoidable circumstance for non payment of the amount as per the schedule of repayment. There was ex-parte decree obatined by

NSEL against him. However, no statement is made before the Court that the accused Gagan has deposited any amount during the execution of ex-parte decree. Fact remains that the accused Gagan Suri has neither deposited any amount before this court as per the undertaking nor deposited any amount with executing the Court. Hence, obtaining ex-parte decree by NSEL cannot be ground to exonerate the applicant from fulfillment of condition no.5 of the bail order.

20 The accused further claimed that his properties were attached by the bank and he has taken effective step to secure and protect the properties. But, again it is clear that no statement is made before this Court that the accused has deposited any amount with the bank after release on bail. Therefore, it is not the case that the accused has deposited amount in the bank and therefore he was avoided from depositing the amount before this Court. Merely taking steps for protection of the property is not sufficient to comply of the condition no.5 of the bail order. It is duty of the accused to protect the interest in the property. Hence, such conduct of the accused will not be any way helpful to nullify the legal effect of condition no.5 of the bail order.

21. It is further claimed by the accused Gagan that he is suffering from health complication and if his bail is cancelled his health condition might get deteriorated. Except oral arguments no documentary evidence on record to support the said contention. Therefore, such argument cannot be acceptable.

22. So called fresh undertaking in additional affidavit with assurance to further assist to recover the money from the bank and assistance to bring the buyer for the properties, which are attached under MPID Act pertaining to Naraingarh Sugar Mills Ltd, along with

undertaking to deposit the amount from the debtors cannot be believed, looking towards previous conduct of accused, wherein accused failed to follow his previous undertaking given at the time of hearing of bail application no.39 of 2014. Merely giving undertaking of future assistance for recovery of amount is not sufficient ground to give leniency to accused from the legal effect of breach of condition no.5 of the order, which was imposed with the clear understanding the accused Gagan. Hence, such arguments cannot be accepted.

23 The learned advocate for the accused Gagan Suri has relied on the judgment of the Hon'ble Supreme Court in the matter of **Biman Chatterjee V/s. Sanchita Chatterjee and another reported in AIR 2004 S.C. 1699** and claimed that the settlement between the parties cannot be ground to grant bail or to cancel the bail already granted. However, in the present case, it is not the case of settlement between two parties, which was relied upon by this Court. In the case in hand, the accused Gagan voluntary given the undertaking before this Court at the time of grant of his bail and gave assurance of repayment of amount in the installments. Therefore, once accused gave suo-moto/voluntary undertaking, it cannot be allowed to withdrawn at the choice of accused Gagan. Therefore, in the facts of present case, wherein the condition no.5 was imposed on the basis of voluntary undertaking given by the accused Gagan, the Principles laid down by the Hon'ble supreme Court in the matter of **Biman Chatterjee V/s. Sanchita Chatterjee** are not applicable and it will not anyway assist the contentions of the accused Gagan.

22 The learned Counsel for the accused further relied upon the judgment of the Hon'ble Bombay High Court in the matter of **Jignesh**

Prakash Shah V/s. The State of Maharashtra in Criminal Bail Application No.1263 of 2014 decided on 22.04.2014 and claimed that the principle accused was released on bail without imposing condition and therefore bail of the accused cannot be cancelled for violation of condition no.5. However, perusal of the order in respect of accused Jignesh Shah reflects that accused Jignesh Shah has not given any undertaking to be relied upon by the Court and bail was granted on the other considerations. The case of the co-accused Jignesh Shah is totally different from the case of accused Gagan, who has given voluntary undertaking to be acted upon by this Court. Therefore, with due respect the judgment of the Hon'ble High court, it is not helpful for the accused Gagan.

24 The learned counsel for the accused Gagan Suri further relied on judgment of the Hon'ble Supreme Court in the matter of **Dolat Ram and others V/s. State of Haryana reported in (1195) 1 SCC 349 and in the matter of Bhagirathsinh Judeja V/s. State of Gujarat reported in AIR 1984 S.C. 372**. Relying on the judgments, it is argued that the consideration for cancellation of bail totally differ from the considerations of grant of bail. The exceptional circumstances are required to cancel the bail which was already granted. There must be clear evidence on record that liberty, which is already granted, is liable to be called back. Thus, it is argued that in view of principle above, the requirements of cancellation of bail are not satisfied in the matter at hand, the bail of accused Gagan cannot cancelled.

25 The judgment of the Hon'ble Supreme Court in the matters of **Dolat Ram and others V/s. State of Haryana reported in (1195) 1 SCC 349 and in the matter of Bhagirathsinh Judeja V/s. State of**

Gujarat reported in AIR 1984 S.C. 372 are salutary and binding on this Court, however those judgments are based on totally different facts and considerations, which were totally different from the present case. In the case at hand, from the order itself, it is apparently clear that this Court while granting bail to accused Gagan made it clear that the breach of condition no. 5, shall be termed as breach of the bail condition. The accused has every knowledge about the imposition of condition no.5 and was well aware about the legal consequence of breach of condition no.5. In spite of it, it reflects that the accused Gagan has only deposited Rs.6 crores in NSEL Escrow account upto March 2015, wherein he was supposed to pay amount of Rs.30 crores by the end of March 2015. As per the schedule till 4th month and installments of 30 crores are outstanding and excepted to be payable by the accused. But only amount of Rs.6 crores was paid. Thus the schedule of repayments was neither taken seriously by the accused nor acted upon. Thus, it is the case of intentional violation of condition no.5 of the bail order by the accused Gagan and it is itself an exceptional circumstance to cancel the bail of accused Gagan.

26 Hence, in the facts of the present case with due respect to the judgments of the Hon'ble Supreme Court in the matter of, **Dolat Ram and others V/s. State of Haryana reported in (1195) 1 SCC 349 and in the matter of Bhagirathsinh Judeja V/s. State of Gujarat reported in AIR 1984 S.C. 372** are not applicable and will not assist any way to the accused Gagan.

27 In addition to the discussion above, it is apparently clear from the record that the accused Gagan gave schedule of repayment amount vide Annexure-A in MA 67/2014. The accused stated that he

was avoided from the repayment of the amount due to his financial problem. However, even at the hearing of this application for cancellation of bail, accused has not made any positive statement for reducing amount of installment or for enhancement of period or number of installments. Therefore, even at the final hearing of this application for cancellation of bail, no statement is came forward for modified compliance of undertaking, which was already given by the accused Gagan before this Court and the accused Gagan simply claims the deletion of condition no.5, which is not permissible in law. Therefore, in the facts of the present case, the prosecution has made out case of intentional breach of condition no.5 by the accused Gagan Suri, which itself amounts to exceptional circumstance to cancel bail already granted to accused Gagan Suri. Accordingly, bail granted to the accused Gagan Suri in Bail Application No.39 of 2014 order dated 10.11.2014 is liable to be cancelled. Hence, point nos.1 and 2 are answered accordingly.

AS TO POINT NO.3.

27 For the discussion and reasoning above, the following order is passed;-

ORDER

- 1 Misc. Application No.135 of 2015 is hereby allowed.
- 2 Bail granted to accused Gagan Sitaram Suri (proprietor of M/s. Yathuri Associated) in B. A. No. 39/2014 vide order dated 10.11.2014 is hereby cancelled.

- 3 The accused Gagan Suri is directed to surrender before this Court on or before 03.06.2017.
- 4 Bail Bonds stands cancelled.
- 5 Misc. Application No.135 of 2015 stands disposed of accordingly.

Dt. 25/04/2017

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

Dictated on : 25/04/2017
Typed on : 05/05/2017
Signed on : 12 /05/2017 .

<p>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”</p>	
<p>On 12/05/2017 at 4.50 p.m.</p>	
<p>UPLOAD DATE AND TIME</p>	<p>Mrs.S. S. Pawar NAME OF STENOGRAPHER</p>

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	25/04/2017
JUDGMENT/ORDER signed by P.O. on	12/05/2017
JUDGMENT/ORDER uploaded on	12/05/2017