

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 514 OF 2014

Bajirao Gajaba Khartode

....Applicant.

Versus

The State of Maharashtra and Ors. **....Respondents.**

Mr. R.G. Joshi, Advocate for applicant.

Mr. A.V. Deshmukh, APP for State.

Mr. V.V. Deshmukh, Advocate for respondent Nos. 2 and 3.

CORAM : T.V. NALAWADE, J.

DATED : 10th February, 2015.

ORDER :

1) The application is filed under section 439 (2) of Cr.P.C. for cancellation of the relief of anticipatory bail granted by the learned Sessions Judge, Vaijapur, District Aurangabad in Criminal Application No. 287/2013 and also for setting aside the order made by the learned Additional Sessions Judge. Both the sides are heard. The learned APP supported the application. This Court has seen the record submitted by the Investigating Officer in the present matter. The Investigating Officer has reported that after getting anticipatory bail, the respondents did not turn up even to show the order of anticipatory bail and due to that the investigation was stalled and no further progress could be made. With whatever material and allegations made and zerox copies

of cheques made available, chargesheet came to be filed.

2) The crime at C.R. No. 233/2013 was registered in Gangapur Police Station Aurangabad for offences punishable under sections 420, 406 etc. of I.P.C. on the basis of report given by Bajirao Khartode. He is the President of one educational institution viz. Maharashtra Prathamik Sanshodhan Kendra, Pune. This institution is formed by some retired teachers. It has accounts in banks and co-operative societies. The business of the institution is being conducted by the President, Secretary and Treasurer. Two out of these three persons of this institution are expected to sign on the record to conduct the business.

3) Respondent No. 2 Janardan Neungare was Secretary of this institution during the period 2009 to 2012. He was expected to look after the transactions of the institution after consulting the Board of Directors of the institution. The entire record including the cheque books, resolution books, etc. used to remain in the custody of Janardan.

4) Janardan stopped coming to the institution all of a sudden from April 2012. The office bearers called him many times and requested him to come to the institution, but he avoided to do so under one or other pretext. When the

complainant visited the branch of State Bank of Hyderabad from Gangapur on 13.6.2012, he found that the amount of Rs. Four lakh was paid to one D.N. Karmalkar, respondent No. 3 of the present proceeding under cheque No. 089706. The complainant realized that the payment ought not to have made to Karmalkar as he has no connection whatsoever with working of the institution. He was not known to the President. The complainant made inquiry with respondent No. 2, the Secretary, but Secretary gave evasive answers. The President and the other members of the Board of Directors made discussion and made inquiry and then they realized that respondent No. 2 Janardan had misused the blank cheques given by the office bearers to him. As office bearers were resident of different places, to avoid the practical difficulties, they had given some blank cheques in the custody of Janardan and they were misused.

5) The complainant realized that more amount was misappropriated by Janardan and on different occasion, he had withdrawn the amount in his own name from the account of the institution and that amount was misappropriated. On the date of F.I.R., the complainant had suspicion that there was misappropriation of amount of atleast Rs. nine lakh. The numbers of cheques are mentioned in the F.I.R. It appears that subsequently, it transpired that by using similar modus operandi,

the amount of Rs. 42.64 lakh was misappropriated by Janardan.

6) In the order under challenge, the learned Additional Sessions Judge has observed that the remaining allegations in respect of the other amount allegedly misappropriated, cannot be considered in the proceeding which was filed before him. He considered only the grievance in respect of cheque No. 089706 and he observed that there was the record that the cheque was given to respondent No. 3 in respect of the work done of the construction of school building. It appears that some record was shown to the Sessions Court by this accused and the Court did the exercise of comparing the signatures of the office bearers. The learned Additional Sessions Judge further observed that as the grievance had relation to the documents, record, there was no need of custodial interrogation.

7) The reasoning given by the learned Additional Sessions Judge shows that there was no consideration of provisions of law and particularly statutory powers of police. When there are such serious allegations, first thing the Court is expected to see is to ascertain as to whether the custodial interrogation of the accused is necessary or not necessary. There are specific allegations that entire record is with Secretary, Janardan and the observations also show that some record was

shown by Janardan himself, but the Court did not consider this circumstance at the time of granting relief. It appears that even necessary conditions were not imposed on Janardan. Whenever there is the allegation of misappropriation of amount of some institution or trust, it needs to be presumed by the Court that the custodial interrogation is necessary as stolen property needs to be recovered. The report of the Police Officer, which this Court has perused today shows that police became helpless due to the order made by the learned Additional Sessions Judge. It is sad that some judges of subordinate judiciary are passing such orders and that is happening probably due to misconception about the right of liberty. Courts are forgetting that the right of liberty is curtailed by the provisions of Cr.P.C., by giving statutory powers to police. Priority needs to be always given to the exercise of statutory powers given to police and it needs to be kept in mind, the discretion of the Court of granting relief is circumscribed by those statutory powers. Such powers are to protect interests of public at large. The public at large is suffering due to such mistakes committed by the Courts. Such orders are causing damage to the image of the judicial system.

8) The fact that the chargesheet is filed against the respondents cannot help in any way to the respondents and on that ground, the present proceeding cannot be dismissed.

Present proceeding was filed in January 2014 and it can be said that tactics are always played to see that such proceedings are protracted. This Court has no hesitation to observe that only due to the period, which has passed after granting of the relief, this Court cannot avoid to pass the orders which need to be passed in the interest of justice and in the interest of public at large.

9) The learned counsel for respondent Nos. 2 and 3 submitted that atleast one cheque was admittedly signed by the complainant and he admits that the amount was properly utilized. He submitted that the remaining cheques were also signed by President and so, he cannot escape the liability. This Court holds that it needs to be observed that it is the duty of the Investigating Officer to see as to whether along with the present respondent No. 2 any of the office bearer is involved in the offence including the present complainant. There is always possibility that office bearers join hands for misappropriation of the money and then they make one of them as a scapegoat. It is the duty of the investigating agency to ascertain as to whether the respondent No. 2 is being made scapegoat and others are also involved. As there are allegations showing that cognizable offence is committed, such steps can be taken by police. From the report of the Investigating Officer it can be said that police want custody of respondent Nos. 2 and 3. Respondent No. 3 has

received the amount and so, it needs to be ascertained as to why and how much amount was received by him. These two persons have come together in this Court to defend the matter and this circumstance also cannot be ignored. This Court holds that custodial interrogation of respondent Nos. 2 and 3 is a must and the order made by the learned Additional Sessions Judge needs to be set aside and relief needs to be cancelled.

10) Before parting with the order, one more thing needs to be mentioned. In proceeding like present one, after filling of the chargesheet, submissions are made to mislead the Court that regular bail is granted and cancelling order of anticipatory bail is meaningless. When anticipatory bail is granted and the criminal Court takes cognizance of the offence after filing of chargesheet, it is expected to follow the procedure laid down in section 438 (3) of Cr.P.C. which runs as under :-

"(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)"

Thus, when criminal Court takes bonds of the accused and surety after taking cognizance, it is not granting of regular bail. In the case reported as **(2011) 1 SUPREME COURT CASES 694 [Siddharam Satlingappa Mehetre Vs. State of Maharashtra and Ors.]**, it is made clear that after getting anticipatory bail, there is no question of consideration of regular bail application. However, in the present matter, no such submission was made for accused/respondent.

11) In the result, the application is allowed. The order made by the learned Additional Sessions Judge, granting anticipatory bail in favour of respondent Nos. 2 and 3, is set aside. The relief of anticipatory bail is cancelled. Respondent Nos. 2 and 3 are to be arrested immediately and committed to custody.

12) The learned counsel for applicant requested for stay to the order as he wants to challenge the order. The said prayer is refused.

[T.V. NALAWADE, J.]

ssc/