

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 551 OF 2015

Dr. Abdul Hameed s/o Abdul Kareem **.... APPLICANT**

V E R S U S

The State of Maharashtra & Anr. **.... RESPONDENTS**

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Mr. Khizer Patel, Advocate for Applicant.

Mrs. Pratibha Bharad, A.P.P. for R.No. 1 - State.

Mr. V.D.Sapkal, Advocate for R.No. 2.

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CORAM : V.M.DESHPANDE, J.

DATE : 8th JULY, 2015

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PER COURT :

1. This is an application u/s 439 (2) of the Code of Criminal Procedure for cancellation of bail.
2. Heard Mr. Khizer Patel, learned counsel for the Applicant in extenso.
3. According to the learned counsel for the applicant, learned trial Court ought not to have granted anticipatory bail in favour of respondent No. 2 on 19/12/2014 in connection with Crime No. 245/2014 for the offences

punishable u/s 420,467,468 of the Indian Penal Code.

4. Present applicant is the first informant, whereas respondent No. 2, who is shown as accused in Crime No. 245/2014, is his real younger brother.

5. The sum and substance of the F.I.R. and the main thrust of the arguments of the learned counsel for the applicant is that though the present respondent No. 2 does not belong to 'Gavandi' caste, which is other backward class, he has secured employment with Potdar Ayurvedic College at Thane and thereby he has cheated State exchequer. According to him, while obtaining the validation certificate, present respondent No. 2 has submitted letter of the present applicant to show that he belongs to 'Gavandi' caste.

6. It is not in dispute that present respondent No. 2 secured his employment with Potdar Ayurvedic College at Thane on the post which was reserved for other backward class. It is also not in dispute that respondent No. 2 submitted an application with the college authorities at the time of securing employment that he belongs to 'Gavandi' caste, which is other backward class.

7. The compilation shows that respondent No.2's caste claim was forwarded to the Caste Scrutiny Committee. His caste claim was disallowed by the said Committee vide order dated 03/01/1986. It is also not in dispute that against the said order of the said Committee, present respondent No.

2 filed statutory Appeal before the Divisional Commissioner, Aurangabad which was registered as Case No. 06/RS Desk.41 and the learned Divisional Commissioner, Aurangabad on 28/01/1997 allowed the Appeal filed on behalf of respondent No. 2 and set aside the order passed by the Caste Scrutiny Committee and declaration was given by the appellate authority that the present respondent No. 2 belongs to Muslim 'Gavandi' caste classified as other backward class. This order of granting the status of other backward class in favour of respondent No. 2 was never challenged by anybody including the present applicant before any Court including this Court. Thus, the order passed by the appellate authority in the year 1987 has already attended its finality.

8. The submission of the learned counsel for the applicant is that the letter which was used by the present respondent No. 2 in order to have the status of other backward class is forged one and, therefore, learned trial Court ought not to have granted anticipatory bail in favour of respondent No. 2. I am afraid that such submission can be entertained at this stage, especially when the caste claim of the respondent No. 2 is settled way back in the year 1987. Further, it was open for the appellate authority to scrutinize the entire record and then pass the order. The appellate authority has discharged its duties properly and validated the claim of respondent No. 2. In that view of the matter, all the submissions made by the learned counsel for the applicant in respect of the caste of respondent No. 2 can not be entertained and accordingly his submission in that behalf are rejected.

9. Learned trial Court while granting anticipatory bail in favour of respondent No. 2 has considered the aspect that the certificate is of the year 1987. Not only that, present respondent No. 2 has already completed his service and stood retired on attaining the age of superannuation. Therefore, he has exercised discretion in favour of respondent No. 2.

10. Further, it is to be noted that prosecution has not filed any application for cancellation of anticipatory bail.

11. The discretion exercised by the learned trial Court is just and proper warranting no interference by this Court.

12. Hence, present Criminal Application for cancellation of bail is dismissed.

[V.M.DESHPANDE, J.]