

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

Criminal Application No.610 Of 2015.

The State of Maharashtra.
Through : Police Inspector.
Shivajinagar Police Station,
Latur, Dist. Latur.



Applicant.

Versus

- (1) Baliram Guruling Palapure.
Age : 62 Years., Occ.: Retired.
- (2) Shakuntala Baliram Palapure.
Age : 55 Years., Occ.: Business
and Household.
- (3) Suhas Baliram Palapure.
Age : 30 Years., Occ.: Business.
- All R/o.: Shrikrupa Housing
Society, AUSA Road, Latur,
Dist. Latur.



Non-Applicants.

Appearance =>

Mr. M.M. Nerlikar, Additional Public Prosecutor for the State of Maharashtra.

Mr. Anand V. Indrale-Patil, Advocate for Non-Applicant Nos. 1 to 3.

CORAM : V.M. DESHPANDE, J.

DATE : 23rd MARCH, 2015.

PER COURT :-

By the present application filed under Section 439(2) of the Code of Criminal Procedure, the State has prayed for cancellation of anticipatory bail granted in favour of Non-Applicant Nos. 1 to 3 by the 2nd Additional Sessions Judge, Latur, dated 10th November, 2014 in Criminal M.A. (A.Bail) No.459 Of 2014, whereby the Non-Applicants were granted anticipatory bail in connection with CR No.3066/2014 registered with Police Station, Shivajinagar, Dist. Latur for the offences punishable under Section/s 13(e) read with 13(2) of the Prevention of Corruption Act, 1988.

[2] I have heard Mr. M.M. Nerlikar, learned Additional Public Prosecutor for the State of Maharashtra and Mr. Anand V. Indrale-Patil, learned counsel for Non-Applicant Nos. 1 to 3, in extenso.

I have also gone through the various grounds raised by the Applicant – State in the application for cancellation of bail.

[3] Narsingh Ganpatrao Ankushkar, Deputy Superintendent of Anti Corruption Bureau, Latur has lodged report with Police Station, Shivajinagar, Dist. Latur on 18th October, 2014 against the present Non-Applicants.

In the First Information Report, it is stated that discrete enquiry was conducted against Non-Applicant No.1, who was Executive Engineer of Kukadi Project as per the Discrete Enquiry No.64/Pune/2008. After attending the age of superannuation, Non-Applicant No.1 stood retired from the service and thereafter, he settled himself at Latur. Since

his various properties are situated at Latur, Enquiry was assigned to the Anti Corruption Bureau, Latur.

[4] Subsequently, the Discrete Enquiry was converted into Open Enquiry. After completion of entire enquiry, report was submitted to the Director General of Police, Anti Corruption Bureau, pointing out that Non-Applicant No.1 has amassed the properties disproportionate to his known income to the extent of 46.40 % and in that process, Non-Applicant Nos. 2 and 3, who are his wife and son, respectively, have supported him and, therefore, the permission was sought to lodge the report against the Non-Applicants, who were granted anticipatory bail.

[5] Undisputedly, Non-Applicant No.1 was in service since 1976 in the Irrigation Department. He stood retired from the Irrigation Department as Executive Engineer. Non-Applicant No.2 is his wife; whereas; Non-Applicant No.3 is his son, who is Civil Engineer by profession.

[6] Since the Non-Applicants were apprehending their arrest in connection with CR No.3066/2014 registered with Police Station, Shivajinagar, Dist. Latur, they filed an application under Section 438 of the Code of Criminal Procedure which was registered as Criminal M.A. (A.BAIL) No.459/2014 before the 2nd Additional Sessions Judge, Latur.

[7] It was contended before the learned Judge of court below that, daughter Dr. Sucheta was given in marriage to Dr. Nitin Patil. Due to harassment caused by Dr. Nitin, she committed suicide. It was further pointed out that one Bhausahab Jadhav and Nitin Patil are causing harassment to them.

[8] The grounds for cancellation of anticipatory bail as found in ground Nos. 1 to 7 of it relates to various properties standing in the name of Non-Applicants. According to the learned Additional Public Prosecutor documents in respect of those properties are required and, therefore, the anticipatory bail ought not to have been granted. He further submitted that at very premature stage of the investigation, application for anticipatory bail was moved, which was granted.

[9] I have gone through the order impugned. Said order elaborately discussed the rival contentions advanced before the court below.

[10] The learned Judge of court below has supplemented the reasons why the court is exercising the discretion in favour of the Non-Applicants. The reasons supplemented by the court below are not perverse.

[11] It is to be noted that, prior to lodging of the report, discrete as well as open enquiry was conducted against Non-Applicant No.1. After a detailed and long drawn enquiry only, officials of the Anti Corruption Bureau reached to the conclusion that Non-Applicant No.1 has amassed the properties disproportionate to his income to the extent of 46.40 %. Thus it is clear that, officers of Anti Corruption Bureau had access to the various documents and after evaluation of those, at their end, has reached to such conclusion, therefore, the submission of the learned Additional Public Prosecutor that for those documents, custody of Non-Applicants is required is wholly misplaced and cannot be appreciated and deserves rejection.

[12] Further the submission of the learned Additional Public Prosecutor is that at very preliminary stage, application for grant of anticipatory bail is moved, is devoid of any substance, in as much as, application for anticipatory bail can be moved by citizen, if he apprehends his arrest and if there is reason to believe that he will be arrested in connection with cognizable offence. In that view of the matter, registration of Crime for cognizable offence against the Non-Applicants, their right to approach before the court, cannot be precluded that application is moved at earlier stage. It is for the court to consider as to whether such application is to be granted or not. But surely, citizen cannot be debarred from moving the application for protection before the court.

[13] In that view of the matter, the submission of learned Additional Public Prosecutor is liable to be rejected and is accordingly, rejected.

[14] The learned Judge of the court below was having access and opportunity to go through the investigation papers when he considered the application for anticipatory bail filed on behalf of the Non-Applicants. After having gone through the said, learned Judge has reached to the conclusion that Non-Applicants made a case for themselves for anticipatory bail. While granting anticipatory bail, perusal of the impugned order shows that, principles for granting application for anticipatory bail as observed by the Hon'ble Apex Court were kept in mind by the court below as it could be seen from the impugned order.

[15] The learned trial court has also taken care of apprehension of the prosecution that the Non-Applicants will be available to the course of

justice. Non-Applicants were directed to surrender their passport before the Police and they were directed not to leave the jurisdiction of the court, without permission. They were also directed to co-operate the investigating agency and provide the required documents. The learned Additional Public Prosecutor could not point out that the Non-Applicants did not extend their co-operation to the Investigating Officer.

[16] In my view, discretion was judicially exercised by the 2nd Additional Sessions Judge, Latur in granting anticipatory bail in favour of the Non-Applicants, warranting no interference, by this court. Hence, application is rejected.

(V.M. DESHPANDE, J.)