

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

CRIMINAL WRIT PETITION NO. 689 OF 2015
WITH
CRIMINAL APPLICATION NO. 2581 OF 2015

Dr. Deepak s/o. Vasantrya Kesari**Petitioner.**

Versus

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

Mr. P.R. Katneshwarkar, Advocate for petitioner.

Mr. S.A. Ambad, APP for State/respondents.

Mr. J.M. Murkute, Advocate for assisting APP.

CORAM : T.V. NALAWADE, J.

DATED : 24th June, 2015.

ORDER :

1. The petition is filed for relief of quashing and setting aside the order made on Exh. 1 of Misc. Criminal Application No. 15/2015, which was pending before the learned Additional Sessions Judge, Nanded. Criminal Application No. 2581/2015 is filed for permission to assist the public prosecutor and it is filed on behalf of the original complainant. Both the sides are heard.

2. The Sessions Court has cancelled the relief of

anticipatory bail granted in favour of petitioner in Criminal Application No. 158/2014 by Sessions Court. The crime was registered on the basis of complaint filed by one Dr. Shriram Kalyankar against the present petitioner. It is the case of complainant that registered trust Nima is a public trust of medical practitioners and it is working on national level and it had a branch at Ganesh Nager, Nanded. The office bearers of this branch have term of one year which can be extended. Deepak Kesari, present petitioner was the President of this branch between the years 2012 and 2014.

3. There are allegations against the petitioner that he created false record of resolutions of the Managing Committee of this trust and gave two portions of the building belonging to the trust by way of lease. One portion was given to Post Office and other was given to one private institution, Tejdnyan Foundation. There are allegations that agreement was made of the period of five years in favour of the Post Office without following the procedure and then the rent amount for the period of four months from November 2013 to February 2014 of Rs. 40,000/- was not credited in the account of the institution and this amount was misappropriated. There is allegation that he had collected the rent of Rs. 4200/- per month from the aforesaid

private institution for the period from February 2014 to July 2014 and he had taken deposit also from this private institution and the amount of Rs. 37,800/- collected from this private institution was not credited in the account of the trust and it was misappropriated.

4. It is contended that when complaints were received, the State unit made inquiry and found that there were illegalities and there was misappropriation and by holding the petitioner guilty, he was removed from the post of President of said branch. Complainant has contended that by creating false record of resolution, the aforesaid record of lease and by misappropriating the amount, present petitioner has committed the offences punishable under sections 420, 463, 465, 468, 471 of I.P.C.

5. After registration of the crime, present petitioner approached the Sessions Court by filing application bearing No. 702/2014. The Sessions Court granted relief of anticipatory bail by putting some conditions like to cooperate the police and attend the police station as and when required.

6. The order made by Magistrate to investigate under

section 156 (3) of Cr.P.C. was challenged in the Sessions Court by filing Revision No. 117/2014 by present petitioner and this revision was allowed. This order was challenged in the Writ Petition No. 163/2015 by present respondent in this Court and this Court quashed and set aside the order of Sessions Judge and restored the order of learned J.M.F.C.

7. It appears that in December 2014 present petitioner gave complaint against the Investigating Officer of the crime that he was demanding illegal gratification and trap was laid against that officer and action was taken. However, at present other officer is making investigation of the crime. The present Investigating Officer had given letters to the petitioner and he was asked to produce the original record and these letters were given on 28.2.2015 and 4.3.2015. One more letter was given on 13.3.2015 and it was expressed that he was not cooperating during investigation. These letters were given in C.R. No. 158/2014. Then the State filed application for cancellation of anticipatory bail on 27.3.2015. Even after filing of the anticipatory bail application notice under section 91 of Cr.P.C. was issued and petitioner was directed to produce original record which was mentioned in previous notices prior to 3.4.2015.

8. The learned Additional Sessions Judge has observed that the petitioner is not cooperating and in spite of giving him many letters by the Investigating Officer, he was not remaining present in the police station and he was not submitting the documents and so, the relief of anticipatory bail needs to be cancelled.

9. The papers of investigation were shown to this Court. The papers show that most of the committee members of Nanded branch have given statements that no resolutions as contended by the petitioner were made. Admittedly, the permission of the authority like Assistant Charity Commissioner was not obtained for giving property of trust on rent even when period of lease is more than five years. One transaction was with the private party and it can be said that in these days when there are such transactions of trust property made, there are under hand dealings. Even if the resolutions on which petitioner is placing reliance is considered, they do not speak about the terms and conditions of lease.

10. There is allegation against the petitioner that the aforesaid amount was not deposited by him in the account of the

trust. He has tried to take defence by contending that he was required to spend on renovation of premises which was given to Post Office and for that, he incurred expenses. He is relying on the so called resolution made by the committee of Nanded office. It is already observed that members of Nanded office committee are disputing that there was such resolution.

11. The aforesaid material and circumstances show that it is the case of creation of false record and there is possibility of under hand dealings for giving property to private party on lease basis. Even the rent of the premises given to the post office and the rent of the premises given to private party can be compared for this purpose.

12. In section 438 of Cr.P.C., grounds and factors are given which are required to be considered when the application for anticipatory bail comes before the Court for consideration. It cannot be said that false allegations are made against the present petitioner. Thus, the Sessions Court ought not have granted anticipatory bail on merits also and this order could have been set aside in a proceeding filed under section 439 (2) of Cr.P.C. The circumstance that the petitioner did not cooperate police after getting anticipatory bail shows that the persons like

applicant are misusing the protection given and due to such orders, the investigation suffers. In such cases thorough investigation is necessary. The post of the persons involved as accused in such cases is not that relevant when serious offences are committed and the Courts are not expected to differentiate between the persons like present applicant and other persons who are earning their livelihood by doing manual work, hard work. This Court sees no reason to interfere in the order made by the learned Sessions Judge of cancelling the order of anticipatory bail.

13. In the result, the petition stands dismissed. Criminal Application No. 2581/2015 filed for permission to assist the learned APP is allowed and disposed of.

14. The learned counsel for application requested for continuation of interim relief. Such relief is refused.

[T.V. NALAWADE, J.]

ssc/