

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

Criminal Application No.1659 of 2013

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Nilesh Ramdas Shirsath.
- 3) Kavita Nilesh Shirsath. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for
respondent No.1.

Shri. V.B. Patil, Advocate, holding for Shri. S.S. Suvarna,
Advocate, for respondent Nos.2 & 3.

With

Criminal Application No.1657 of 2013

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Sudhir Atmaram Shewale. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for
respondent No.1.

Shri. V.B. Patil, Advocate, holding for Shri. S.S. Suvarna, Advocate, for respondent No.2.

With

Criminal Application No.2176 of 2013

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Sudhir Atmaram Shewale.
- 3) Prakash Pitambar Bhamare.
- 4) Modilal Tukaram Chaudhari.
- 5) Sharad Ramchandra Sonawane.
- 6) Madhav Vinayak Kulkarni. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for respondent No.1.

Shri. Pawan B. Pawar, Advocate, for respondent Nos.2 to 6.

With

Criminal Application No.2177 of 2013

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Bansilal Tribhuvan Gujrathi. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for
respondent No.1.

Shri. Pawan B. Pawar, Advocate, for respondent No.2.

Criminal Application No.2310 of 2013

With

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Vrushali Sudhir Patil.
- 3) Sudhir Atmaram Shewale.
- 4) Sarlabai Sharad Sonawane.
- 5) Prakash Pitambar Bhamare.
- 6) Sudhakar Kamlakar Kale. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for
respondent No.1.

Shri. Pawan B. Pawar, Advocate, for respondent Nos.2 to
6.

With

Criminal Application No.2312 of 2013

* Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Yogesh Prakash Bhamare.
- 3) Prakash Pitambar Bhamare.
- 4) Sudhir Atmaram Shevale. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for respondent No.1.

Shri. Pawan B. Pawar, Advocate, for respondent Nos.2 to 4.

With

Criminal Application No.3558 of 2013

- * Anil Ganjidhar Pawar. .. **Applicant.**

Versus

- 1) The State of Maharashtra.
- 2) Chandrashekhar Bhalchandra Kulkarni.
- 3) Pradipkumar Rajaram Sonawane. .. **Respondents.**

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for respondent No.1.

Shri. Mukul Kulkarni, Advocate, for respondent Nos.2 & 3.

With

Criminal Application No.5383 of 2012

* Anil Ganjidhar Pawar.

.. Applicant.

Versus

- 1) The State of Maharashtra.
- 2) Pushpa Sudhir Patil.
- 3) Sudhir Atmaram Shewale
- 4) Sudhakar Kamlakar Kale.

.. Respondents.

Shri. A.B. Girase, Advocate, for applicant.

Shri. N.B. Patil, Additional Public Prosecutor, for respondent No.1.

Shri. V.B. Patil, Advocate, holding for Shri. S.S. Suvarna, Advocate, for respondent Nos.2 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 12th MARCH 2015

ORDER:

1) All the applications are filed under section 439(2) of the Code of Criminal Procedure for cancellation of relief of anticipatory bail granted to the respondents of these cases by the learned Additional Sessions Judge, Dhule. Different crimes were registered on the basis of complaints filed by the present applicant for offences punishable under sections 420, 406, 409, 468, 467, 34 etc of the Indian Penal Code in Deopur East Police Station

Dhule. Crimes were registered after giving directions by the learned Judicial Magistrate, First Class to make investigation under section 156(3) of the Code of Criminal Procedure. All the crimes are arising out of so called illegal activities of the office bearers and directors of the managing body of one cooperative society and so all the matters are being decided by common order. Both the sides are heard. Learned Additional Public Prosecutor supported the applicant.

2) Complainant Shri. Anil Pawar has contended that since 30-11-2010 he has been working as the Chairman of the Dhule Zilla Parishad Employees Cooperative Housing Society and after getting the record of the society he realized that illegal activities were done by the previous managing body and they have misappropriated the money of the society and they have cheated the members of the society. It is contended that accused Nos.1 to 6 from Private Complaint No.301/2012, matter from Criminal Application No.1959/2013, were the Directors of the society at the relevant time and their names are as under :-

- (1) Sudhir Atmaram Shewale.
- (2) Prakash Pitambar Bhamare.
- (3) Motilal Tukaram Choudhari.
- (4) Bansilal Tribhuvandas Gujarathi.
- (5) Madhav Vinayak Kulkarni.
- (6) Sharad Ramchandra Sonawane.

3) It is contended that these Directors were selected by General Body of the society in the meeting dated 25-6-2000 and they were to work for the period from 2000-2001 to 2003. It is contended that even after expiry of the period for which the Directors were selected, they did not call general body meeting and no new elections were held but they continued to control the society.

4) It is the contention of the complainant that, survey Nos. 69/1 and 69/4 from village Deopur was the property of the aforesaid society and they were acquired for making available plots for constructions to the members of the society who were more than 44 in number. They were the employees of the Zilla Parishad and the society was formed for the benefit of these members and so the plots could not have been given to

outsiders. It is contended that the allotment of plots was done after development of the property by the society in the resolution passed in the meeting of the society dated 12-12-1981. It is contended that some space of the developed property was reserved for the benefit of all the members of the society. It is contended that on one piece of the plot building of the office of the society was constructed and there was also well in this piece of plot. It is contended that those properties were kept for the benefit of all the members of the society and so these plots could not have been transferred in favour of anybody.

5) In Crime No.92/2012 from Criminal Application No.1659/2013 the complainant has made allegation that in the aforesaid reserved space and particularly Plot No.10/B there was construction of the office of the society and there was also well. It is contended that accused Nos.1 to 6 of this crime joined hands and created record of resolution of the Board of Directors dated 20-6-2004 to the effect that the plot was to be sold to the son-in-law of the Chairman Sharad Sonawane. Accused No.7 is the son-in-law of the Chairman Sharad Sonawane and accused

No.8 Kavita is the daughter of Sharad Sonawane. It is the case of the complainant that under the sale deed dated 19-1-2005 the plot was shown to be sold to accused No.7 by the society and this sale deed is executed by Sharad Sonawane and it is shown that he represented the society. It is contended that in the resolution, the consideration of amount of Rs.71,000/- was shown. It is contended that no amount of consideration was credited in the account of the society. It is contended that this property is virtually grabbed by the Chairman and his son-in-law and all the members of the society are deceived by them. As per the resolution accused No.1 from this crime had proposed the transfer of this plot in favour of accused No.7. It is contended that all the Directors knew that it was the property kept for the benefit of all the members. The value of the property was much more than shown in the resolution but they created record and executed sale deed for grabbing the property.

6) In the proceeding of Criminal Application No.1659/2013 some record is produced by the applicant showing that there was construction of the office of the

society and it was being used by all the members of the society. Photographs of the construction and the well are produced. Affidavit in support of the aforesaid contentions is filed. The record of resolution of the society making allotment of the plots is filed along with the map of development and copy of sale deed executed in favour of accused No.7 is filed and the record like copies of resolutions made for transferring the property to accused No.7 is also produced. The record like statements of accounts of the bank in respect of the society is produced to show that the consideration was not deposited with the society. Correspondence is produced to show that some directors and members like M.V. Kulkarni, Wagh, Raghunath Pundlik Patil, Tukaram Vithal Choudhari, Shantilal Gujarathi, Shashikant Rajaram Jar, Hiranman Babulal More, Motilal Tukaram Chaudhari, Sudhakar Kamlakar Kale and B.T. Gujarathi have the grievance that no such resolution was passed and fraud is committed and the society is duped by the accused persons. From Crime No.92/2102 even the Director B.T. Gujarathi has contended that he had given resignation in May 2004 and during his tenure there was no such resolution. P.P.

Bhamare, another Director has contended that in the year 2004 he had also resigned. From the copy of the resolution it can be said that relevant resolution is in respect of the so called meeting of the Board of Directors dated 20-6-2004. There is one more circumstance in respect of so called illegal activity. When there was construction on the plot, no such construction was shown and it was shown in the sale deed that it was open plot.

7) To oppose the application it is submitted by the learned counsel for respondents Nilesh Shirsath and Kavita Shirsath (accused No.7 and 8 of the crime) that the application for cancellation of relief of anticipatory bail was made as against the main accused Sharad Sonawane and against other Directors in this Court and this Court has rejected the application and so the relief granted in favour of the present respondents cannot be cancelled. Submission was made that after filing of the charge sheet in the crime bond is given by the respondents in the said case and so it needs to be treated that they are now on regular bail and so the order of anticipatory bail cannot be cancelled.

8) The aforesaid material available as against respondent No.2 Nilesh Shirsath shows that there are many circumstances showing that he had knowledge that the plot could not have been transferred to him by the society. He is son-in-law of the then Charmian Sonawane. Different amounts were mentioned as consideration in the resolution and in the sale deed. In the sale deed it is mentioned that from time to time this respondent had given amount to the society and so nothing was paid on the date of the transaction by this respondent to the society. There is no record to show that any consideration in respect of this transaction was credited in the account of the society. It can be said that this plot is grabbed by respondent No.2 Nilesh Shirsath by misusing position of his father-in-law Sonawane. The circumstance that this Court refused to cancel the anticipatory bail granted in favour of Sharad Sonawane cannot come in the way of this Court to cancel the relief granted in favour of Nilesh. The sale deed is executed in favour of Nilesh Shirsath of the plot mentioned in this complaint.

9) The submissions made by the learned counsel for the respondents that regular bail is granted and so anticipatory bail cannot be cancelled is not acceptable. Copy of order made by the Hon'ble Apex Court in S.L.P. (Criminal) No.24/2014 (Deepak v. State of Maharashtra) is produced. In that case the Apex Court has observed that when regular bail is granted, there is no question of cancellation of anticipatory bail. In the present case no record at all is produced to show that the relief of anticipatory bail was limited for a particular period. In the case reported as **(1980) 2 SCC 565 (Gurbaksh Singh Sibbia v. State of Punjab)** decided by five Hon'ble Judges of the Apex Court and the subsequent case reported as **(2011) 1 SCC 694 (Siddharam Sadlingappa Mehtre v. State of Maharashtra)**, the Apex Court has made it clear that ordinarily the relief of anticipatory bail remains in existence till disposal of the case. The provision of Section 438(3) of the Code of Criminal Procedure Code runs as under :-

"438 - Direction for grant of bail to person apprehending arrest :

(1) . . .

(2) . . .

(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)."

This provision shows that after introduction of the provision in the Code of Criminal Procedure with effect from 31-12-2009 it is not possible for the Criminal Court taking cognizance of the matter to issue non bailable warrant against the accused in whose favour there is order of anticipatory bail under section 438 of the Code. The Magistrate is expected to issue bailable warrant and he can take bonds which will be in conformity with the direction given by the Court under section 438(1) of the Code. Thus, it is not necessary now to file application under section 439 of the Code, the application for regular bail, if there is already order of anticipatory bail in favour

of accused made under section 438 of the Code. Thus, in the present case there was no question to apply for regular bail under section 439 of the Code and so the submission made in that regard is not at all acceptable. It needs to be presumed in the present case that respondent No.2 Nilesh could not be arrested in this case and the bonds are taken from him by the learned Judicial Magistrate only due to the order made in his favour under section 438 (1) of the Code. Thus if the order made in his favour of anticipatory bail is cancelled, it will be open for police to arrest him. The Court is also expected to keep in mind statutory powers of police under sections 41, 156, 170, 173 of the Code of Criminal Procedure. The police can make more investigation after the arrest of respondent No.2 and the amount misappropriated by these persons can be recovered. The circumstance that transaction can be challenged in Cooperative Court or Civil Court cannot be used in favour of the respondents in view of the record of the present matter. Prima facie, offence is committed and so the investigation needs to be made and custodial interrogation is a must in such a case. In view of the facts and circumstances of the case, this

Court holds that the order made by the learned Additional Sessions Judge cannot sustain in law. The relevant material is not at all considered by the learned Additional Sessions Judge and the aforesaid relevant provisions are also not touched by the learned Additional Sessions Judge. Thus, the application made as against Nilesh Shirsath needs to be allowed and the order made in his favour needs to be set aside.

10) In Criminal Application No.5383/2012 the order made by the learned Additional Sessions Judge in Criminal Application No.745/2012 is challenged and prayer is made to set aside the order made in favour of Sudhir Atmaram Shewale, Director and Pushpa Sudhir Patil, wife of Sudhir Shewale. There is allegation in this matter that one half portion of Plot No.32 from City Survey No.69/4 was allotted to a member, Dayaram Rajaram Patil in the year 1981. It is contended that Dayaram had never sold this plot and he had not returned the plot to the society. Though this plot was allotted to Dayaram the society's name was shown in the revenue record. Dayaram died in 2007. Prior to death he had applied to the society for

seeking permission to make construction. It is contended that Chairman Sonawane and Secretary Kale were insisting him that he should return the plot to the society but he had refused to do so. It is contended that in 2009 the son of Dayaram namely Prakash had applied to the society for entering name of his mother, widow of Dayaram in the record of the society as owner of this plot. It is contended that requisite charges of Rs.5000/- were paid by Prakash with the society for doing the needful but the Chairman Sonawane avoided to transfer the plot in the name of the widow of Dayaram. It is contended that as per the record, this portion of the plot is shown to be sold to the wife of Sudhir Shewale, respondent No.2 of the proceeding under sale deed dated 16-6-2005 for consideration of Rs.45,000/-. It is contended that when Prakash approached accused Shewale and his wife they said that they had given the amount to Chairman Sonawane and they will return the plot to him only if he is ready to give Rs.2.5 lakh. It is contended that by misusing the position Shewale has grabbed this plot and caused loss to the successors of Dayaram Patil. Copy of application given by widow of Dayaram to police shows

that they have the grievance of the aforesaid nature. A copy of sale deed executed in favour of Pushpa Sudhir Patil by the society is produced and this sale deed is signed by Sharad Sonawane, the then Chairman of the society and the transaction is dated 16-6-2005. There is no record with the society to show that Dayaram Patil had returned this plot. It is clear that the member of the society is also deceived by such transaction and loss is caused to him by Sudhir Shewale, it is cognizable offence and so the Criminal Court has not committed any error in giving directions under section 156(3) of the Code to make investigation. Similar contentions for respondents were made as made in the first proceeding for the respondents. In the present proceeding there is nothing on record to show that Shewale had really deposited any amount in the account of the society. It is clear that the plot is grabbed by Sudhir Shewale as it is purchased in the name of his wife. Custodial interrogation of both of them is necessary. This Court is avoiding to make any observations about the effect of the sale deed on the rights of the successors of Dayaram as the plot was already allotted to Dayaram. But as the record is created,

thorough interrogation is required and that can be done only after arrest of these two persons. So the application made against Pushpa Sudhir Patil and Sudhir Atmaram Shewale needs to be allowed by setting aside the order made in favour of them.

11) Criminal Application No.2310/2013 is filed for cancellation of relief granted to the respondents-accused of this proceeding in Criminal Application No.729/2012 by the learned Additional Sessions Judge. In this crime there are allegations that Plot No.1 from Survey No.69/1 was allotted to one member of the society but this plot (half portion) is shown to be allotted to accused No.1 viz. Vrishali Sudhir Patil, daughter of the then Chairman Sonwane by creating record of resolution. It is contended that member to whom the plot was allotted has not surrendered the plot and behind his back the property is shown to be given to accused No.1 and she has grabbed this plot by misusing the position of her father. It is contended that this plot was of P.N. Joshi and first it was shown to be transferred to Sarlabai, wife of Chairman, who was not member and then to the daughter of Sarlabai

viz. Smt. Vrishali. However in this matter there is no record to show that the original plot holder has some grievance in the matter. It will be open to the original plot holder to approach police against the persons concerned. Like in other cases in this case there is no grievance of the original plot holder. So this Court holds that it is not desirable to cancel the relief at this stage. If the original plot holder comes forward, some action can be taken even by this Court. In view of these circumstances, this application stands rejected.

12) In Criminal Application No.3558 of 2013 relief is claimed to cancel the anticipatory bail granted to respondent in Criminal Application No.726/2012. In this crime there are allegations that false record of resolution of meeting of the Board of Directors was created even when there was no quorum and the plot which was originally allotted to Pradipkumar Rajaram Sonawane was shown to be allotted to Chandrashekhar Bhalchandra Kulkarni. The main grievance in this case is that the transfer fee of Rs.5,000/- is not deposited in the account of the society. That allegation can be said to be against

the office bearers and so the protection could have been given to Chandrashekhar Kulkarni and Pradipkumar Rajaram Sonawane. This Court holds that it is not desirable to cancel the relief granted in their favour also. Criminal Application No.3558 of 2013 stands rejected.

13) Criminal application No.2312 of 2013 is filed for cancellation of the relief granted to the respondent in Criminal Application No.731/2012. There are allegations that plot No.3 which was initially allotted to Nathu Sitaram Patil could not have been sold without permission of the society and without payment of charges but half portion of this plot was shown to be sold to accused No.1 Yogesh Prakash Bhamare son of accused No.2 Prakash Pitambar Bhamare, who was Director. It is contended that the fees in respect of the transaction is not deposited in the account and thereby offence is committed. Relief is claimed against Sudhir Atmaram Shewale also in this matter. In view of nature of allegations and the fact that Sharad Sonawane was the Chairman and no specific role is attributed in this transaction to Sudhir Shewale in the complaint, this Court holds that it is not desirable to

cancel the relief granted in favour of these respondents. So, Criminal Application No.2312 of 2013 stands rejected.

14) Criminal Application No.2177 of 2013 is filed for cancellation of the relief granted to respondent in Criminal Application No.389/2012. Respondent Bansilal Gujarathi is said to have played part in the transactions which were made by Chairman Sonawane but he is already shown as witness in other matter. He had written a letter to the effect that he had resigned from the post. In view of nature of allegation against him this Court holds that it is not desirable to cancel the relief granted in his favour. So, Criminal Application No.2177 of 2013 is rejected.

15) Criminal Application No.2176 of 2013 is filed for cancellation of anticipatory bail granted to the respondents in Criminal Application No.381/2012. The respondents were Directors. There are allegations that they were party to the activities, the transaction in respect of which the transfer charges were received but were not deposited in the account of the society. Allegations are

mainly against the President. In view of nature of allegations in this crime made against the respondents this Court holds that it is not desirable to cancel the relief granted in favour of these respondents in this crime, CR No.47/2012. In the result, Criminal Application No.2176 of 2013 stands rejected.

16) Criminal Application No.1657 of 2013 is filed for cancellation of relief granted in Criminal Application No.730/2012. Sudhir Shewale is the only respondent of this proceeding (Crime No.93/2012). It can be said that the main allegations are against Sharad Sonawane. There are allegations that withdrawal of the amount of more than Rs.3.57 lakh of the society was shown from the account of the society and there is no record to show that, the amount was spent for the society. It is contended that the amount is misappropriated. This Court has cancelled the anticipatory bail granted to Sudhir Shewale in one proceeding and so in that matter police can make interrogation about part played by Sudhir Shewale. As the main allegations are against Sharad Sonawane, so this Court holds that it is not desirable to cancel the relief

granted to Sudhir Shewale in this crime. In the result, Criminal Application stands rejected.

17) In the result, following order :-

18) Criminal Application No.1659 of 2013 is partly allowed. The order of grant of relief of anticipatory bail in favour of respondent Nilesh Shirsath is set aside and the relief granted in favour of Nilesh is cancelled. He is to be arrested and committed to custody.

19) Criminal Application No.5383 of 2012 is partly allowed. The order of grant of relief of anticipatory bail in favour of respondents - Pushpa Sudhir Patil and Sudhir Atmaram Shewale is set aside and the relief granted in their favour is cancelled. They are to be arrested and committed to custody.

20) Criminal Application Nos.1657 of 2013, 2176 of 2013, 2177 of 2013, 2310 of 2013, 2312 of 2013 and 3558 of 2013 stand rejected.

Sd/-
(T.V. NALAWADE, J.)

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