

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

CRIMINAL APPLICATION NO. 5887 OF 2013

Dilip Harakchand Jain

....Applicant.

Versus

The State of Maharashtra & Ors.

....Respondents.

Mr. R.R. Mantri, Advocate for applicant.

Mrs. M.A. Deshpande, APP for State/respondent Nos. 1 to 3.

Mr. P.R. Patil, Advocate for respondent Nos. 4 and 5.

CORAM : T.V. NALAWADE, J.

DATED : 11th March, 2015.

ORDER :

1. The application is filed under section 439 (2) of Cr.P.C. for cancellation of bail granted by the learned J.M.F.C. on 15.10.2013 in C.R. No. 161/2010 registered in Amalner Police Station for the offences punishable under sections 193, 196, 406, 409, 467, 34 etc. of I.P.C. The said order was not challenged by filing application under section 439 (2) of Cr.P.C. in Sessions Court and directly present proceeding is filed in this Court. Both the sides are heard.

2. The learned APP submitted that the chargesheet against present respondents/accused and other accused is filed

on 24.2.2015. She submitted that the investigation is completed and the relevant record like receipts etc. are seized and the statements of the persons, who are in power, are also recorded.

3. Present respondents/accused were working as Secretary of Khandesh Education Society during the relevant period, though the period of Secretaries were different. Present applicant/original complainant has made allegations against Managing Body which was in power from 2001 to 2010 that they created false record and by using that false record, they misappropriated amount of Rs. 50 lakh of the society. Different instances of misappropriation are mentioned in the complaint. Allegations are made that the Managing Body was to appoint Secretary and said Managing Body has appointed respondents as Secretary. Allegations are made that they joined hands with the Directors, the persons in power and they were also responsible for the misappropriation.

4. Initially relief of anticipatory bail was granted by the learned Additional Sessions Judge, Amalner. The said order was challenged by the applicant in this Court by filing Criminal Application No. 559/2012 under section 439 (2) of Cr.P.C. The said application was allowed by this Court and the relief was

cancelled. This order was challenged by the Directors/accused in Supreme Court. The submissions made show that Hon'ble Apex Court has set aside the order made by this Court. It appears that present respondents did not challenge that order, but they surrendered before police.

5. The submissions made show that they surrendered on 14.10.2013 and on the same day, they were produced before J.M.F.C. The investigating agency demanded police custody remand of the present respondents, but it was refused by passing reasoned order by the learned J.M.F.C. This order was challenged by State/investigating agency by filing revision. However, they did not succeed in revision. The said matter was not taken up to Higher Courts and so, the order made by the learned J.M.F.C. of refusal of police custody remand has become final.

6. It is a grievance of the applicant/original complainant that police did not show necessary interest in the matter due to the influence which the accused persons could yield. He took this Court through the observations made by this Court in different orders showing that investigating agency was not taking necessary interest in the matter and directions were given

by this Court (Division Bench) in that regard.

7. Though there is grievance of aforesaid nature, there are orders of learned J.M.F.C. and also the Hon'ble Apex Court. Hon'ble Apex Court has set aside the order made by this Court by which the order of Sessions Court granting relief of anticipatory bail was set aside by this Court. It can be said that the main accused were the Directors, persons who were in power and they had power to appoint the Secretary. In view of these circumstances, a different view is not possible against the present respondents. As the order made by the learned J.M.F.C. of refusal of police custody was not challenged further, nothing can be achieved by allowing the present proceeding. In ordinary circumstance, the bail would have been granted to present respondents after refusal of police custody. Cancellation of bail order is a serious matter and that can be done in only exceptional cases. In view of the aforesaid material and the orders made by the Apex Court and the learned J.M.F.C., this Court holds that it is not possible to set aside the order of bail made in favour of respondents.

8. The learned counsel for applicant submitted that action needs to be taken against the concerned Investigating

agency, who did not show interest in the matter. He submitted that they probably joined hands with the accused and they did not take care like production of case diary etc. before J.M.F.C. and due to their approach, the learned J.M.F.C. refused police custody remand. If there is grievance of aforesaid nature and the complainant/applicant has desire that action needs to be taken against the concerned investigating agency, police, there is liberty to the complainant/applicant to take proper steps for the same.

9. In the result, the application is rejected.

[T.V. NALAWADE, J.]

ssc/