

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2335 OF 2014

Mr. Sainath Laxman Desai. ... Petitioner.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. A.S. Khandeparkar a/w. Mr. Lokesh Zade i/b. Khandeparkar & Associates, advocate for petitioner.

Mr. Nitin Patil i/b. Mr. Nikhilesh Pote, advocate for respondent No. 2.

Ms. G.P. Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 2, 2015

P.C.:

1 Heard the learned Counsel for the petitioner, learned Counsel for the respondent No. 2 and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein is an accused in Crime No. 94 of 2013 registered at Malvan Police Station for offence punishable under Section 420, 465, 468, 471 read with section 34 of the Indian Penal Code. Crime was registered pursuant to directions under Section 156(3) of the Code of Criminal Procedure, 1973. The accused i.e. the present petitioner had filed an application seeking pre-arrest bail. By an order dated 2/9/2013, the learned Sessions Judge, Sindhudurg had granted pre-arrest bail in favour of the Petitioner, as the case was based upon the documentary evidence.

4 It appears from the record that the original complainant Shri Sachin Desai i.e. the respondent No.2 herein had filed a complaint before the Sessions Judge at Oros, Sindhudurg seeking cancellation of the anticipatory bail granted in favour of the present petitioner. The said application was filed by the complainant in his personal capacity. The State had not challenged the order granting pre-arrest bail. The application was filed on 21/5/2014 i.e. practically after more than 8 months of grant of pre-arrest bail.

5 According to the complainant, the accused had influenced the revenue officer and had filed an affidavit on 4/10/2008 i.e. admittedly prior to grant of pre-arrest bail. The learned Sessions Judge upon considering the averments in the application had allowed the application and had passed an order that the anticipatory bail granted to the accused No. 1 i.e. present Petitioner is recalled and that the Petitioner was directed to surrender before the Investigating Officer of Malvan Police Station within 7 days from the date of the order.

6 Being aggrieved by the said order, the Petitioner has filed this Petition on 23/6/2014. This Court (Coram : Revati Mohite Dere, J) by an order dated 25/6/2014 was pleased to stay the impugned order dated 19/6/2014. The interim relief was continued from time to time.

7 The learned APP submits that the investigating agency is supporting the complainant and it is necessary to take the Petitioner into custody for seeking the documents, which have been allegedly false. It is submitted that the Petitioner herein had represented himself as the grand son of Vishnu Anand Desai and had filed an affidavit to that effect on 4/10/2008. On the basis of the said affidavit, he has sold the lands at the prices much lesser than the ready reckoner and in view of this, his custody is required.

8 It is true that the case rests upon the documentary evidence. The prosecution is placing implicit reliance upon the affidavit allegedly sworn by the Petitioner to create circumstances in his favour to sell the lands. However, since anticipatory bail was granted in the year 2013, by efflux of time, it would not be in the interest of justice to recall the order granting pre-arrest bail. However, grant of pre-arrest bail was never challenged by the Investigating Officer.

9 The learned Counsel for the Petitioner submits that the complainant had no locus to file an application seeking cancellation of bail, unless there were circumstances to substantiate his contentions. In view of this, the learned Counsel prays that the petition be allowed as the valuable right to liberty of the Petitioner would also be at stake especially, he has been protected by the orders of the Court granting him pre-arrest bail.

10 Taking into consideration the facts of the case, passage of time spent after grant of pre-arrest bail and the submissions advanced across the bar, this Court is of the opinion that the Petition deserves to be allowed.

11 Hence, following order is passed:

ORDER

(i) The Writ Petition is allowed.

(ii) The order dated 19/6/2014 passed by the learned Sessions Judge, Sindhudurg-Oros in Cr. M.A. No. 6 of 2014 is hereby quashed and set aside.

(iii) The Petitioner shall report to the investigating officer from 7/9/2015 to 11/9/2015 between 10 a.m to 1 p.m. and cooperate with the Investigating agency to the best of his capacity.

(iv) Rest of the conditions imposed by the Sessions Court are maintained.

12 The Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)