IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.610 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) Mohit Mahendra Agrawal
2) The State of Maharashtra ... Respondents

a/w
CRIMINAL APPLICATION NO.904 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Ganesh Bhanudas Shinde ... Respondents

a/w
CRIMINAL APPLICATION NO.905 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Bharat Dadaji Bhasme ... Respondents

a/w
CRIMINAL APPLICATION NO.906 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Ganesh Ramdas Dhongade ... Respondents

a/w
CRIMINAL APPLICATION NO.907 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Dinesh Bhanudas Shinde ... Respondents

a/w
CRIMINAL APPLICATION NO.908 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Deepak Dharmaraj Patil ... Respondents

a/w
CRIMINAL APPLICATION NO.909 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Vinubhai Keshavlal Gajjar ... Respondents

a/w
CRIMINAL APPLICATION NO.910 OF 2013

Reliance Capital Limited ... Applicant

Vs.

1) The State of Maharashtra
2) Prakash Aman Khairnar ... Respondents

Mr.A.H.H. Ponda a/w Ramesh Dube-Patil i/b M/s.Ajay Misar & Co. for the Applicant
Mr.A.H.H. Ponda i/b Goenka Law Asso. for Applicant in APL/904/2013 to 910/2013
Ms.R.V. Newton, APP, for Respondent – State in all matters
Mr.Sachin Deokar for Respondents in APL Nos.610/2013, 904/2013, 905/2013, 907/2013 and 908/2013

CORAM: **MRS.MRIDULA BHATKAR, J.**
ORDER RESERVED ON: **JULY 3, 2015**
ORDER DELIVERED ON: **JULY 7, 2015**

ORDER:

1. All these applications are moved by the original complainant for cancellation of bail which was granted vide order dated 19.6.2013 passed by the Sessions Court, Nashik in deciding the Criminal Miscellaneous Application for anticipatory bail No.170 of 2013. Though the accused are different persons, original complainant is same and they have committed similar type of offences and the Sessions Court has passed a common order, therefore, all these applications are disposed of by this common order.

2. The facts of the case are that the original complainant is one Ganesh Aparaj working in Reliance Capital Limited as a Manager. The company is in the business of finance. In December, 2012, some applications were submitted for obtaining loan for purchasing cars. After verifying the loan applications and the documents annexed therewith, it approved loans. One Kiran Mahajan, at the relevant time working as a Sales Executive Officer since February, 2011, disbursed the loans.

However, it was found on verification that the documents in 32 loan proposals were forged and in fact, neither vehicles were purchased and hypothecated as a surety towards the loan, nor an EMI towards the load was paid. The company realised a fraud played on it and so complaint was given pursuant to which offence was registered against the persons, who were beneficiaries of the loans. The complaint was given on 23.1.2012 which was registered at C.R.No.27 of 2013. The accused approached the Sessions Court, Nasik for pre-arrest bail. All the Anticipatory Bail Applications were clubbed and the relief was granted in favour of the respondents i.e., the accused persons. Thereafter, the said order was confirmed on 19.6.2013 in respect of nearly 11 accused and three applications were rejected. The police arrested 2 accused. They were arrested and granted bail. Being aggrieved, the original complainant filed these applications for cancellation of pre-arrest bail on 2.7.2013 before this Court. Notices were issued and some of the respondents were served who are before the Court and are represented by a Counsel. The State through the Police Inspector, Economic Offences Wing, Nasik City, appeared and filed its say on 3.2.2015.

3. Mr.Ponda, the learned Counsel for the applicant, made submissions that the order passed by the learned Sessions Judge is perverse. He submitted that cancellation of bail and setting aside an illegal order of the trial Court are two different things. In the present case, the order passed

is perverse and hence, it has to be set aside. He submitted that the learned judge in para 7 of his order has relied on irrelevant material and erroneously held that the accused have admitted that they took loans for purchasing vehicles and some of them have repaid some amounts and have also paid some amounts and therefore, expressed his opinion that in such case, a question of committing any offence by them did not arise. The learned Counsel submitted that to obtain loan, all these respondents have filed forged documents giving bogus and false documents about the numbers of the vehicles. They have produced bogus R.C. Books with forged seal and signature of the R.T.O. The learned Counsel submitted that if such documents are produced and the forgery is ex-facie, then the trial Court ought not to have taken a view that no offence is committed in the present case.

4. In order to buttress his submissions on the point of illegality, he submitted that the learned Judge has taken into account irrelevant material of repayment of EMI and hence, it amounts to perversity. The learned Judge has nowhere stated relevant fact that it is a case of forgery. He submitted that when the learned Judge has taken into account irrelevant material while granting bail such order needs to be set aside as it cannot be said how much that irrelevant material would have weighed on his mind deciding the application in favour of the accused. In support

of his submissions, he relied on the judgments in **Puran vs.Rambilas[1].** He submitted that the same view taken in *Puran vs. Rambilas (supra)* has been taken in **Dinesh M.N. (SP) vs. State of Gujarat[2]**; **Manjit Prakash & Ors. vs. Shobha Devi & anr.[3]**; **Narendra K. Amin (Dr.) vs State of Gujarat & anr.[4]**; **Ram Babu Tiwari vs. State of Madhya Pradesh & anr.[5]** In all the above four judgments, the Supreme Court has relied on the judgment in the case of **Puran vs. Rambilas (supra)** on the point of perversity. Further, the learned Counsel relied on the case of **Arulvelu and anr. Vs State represented by the Public Prosecutor & anr.,**[6] on the point of explanation of the word 'perverse'. He submitted that their custodial interrogation is required to verify from where they prepared these bogus documents. The learned Counsel submitted while deciding anticipatory bail, it is mandatory for the Court to hear the learned Prosecutor and then to grant pre-arrest bail. In order dated 19.6.2013, there is no mention that the learned Judge has heard the Prosecutor. The learned Counsel further submitted that in the said order, the learned Sessions Judge has rejected three applications though the said accused were also on the identical footing and they had a similar involvement. Therefore, he submitted that the order is illegal.

1 (2001) 6 SCC 338
2 (2008) 5 SCC 66
3 (2009) 13 SCC 785
4 (2008) 13 SCC 584
5 (2009) 12 SCC 471
6 (2009) 10 SCC 206

5. The learned Prosecutor has supported the applications for cancellation of anticipatory bail. She submitted that the investigation could not move further for want of custodial interrogation of these accused. Hence, chargesheet is not filed.

6. The learned Counsel for the respondents/accused submitted that they have acknowledged the loan and are repaying and they are on anticipatory bail since the last 2½ years. Arbitration proceedings are going on the same issue and cancellation of bail would amount to great injustice to the respondents. They do not have any criminal antecedents and therefore, these applications be dismissed.

7. The submission of the learned Counsel for the applicant that while allowing the application for anticipatory bail, the Prosecutor was not heard, cannot be accepted because in the said order, in para 5 thereof, the learned Judge has mentioned that by filing say, the learned Public Prosecutor has opposed the application. So it appears that the learned Judge has taken into account the written submissions of the Public Prosecutor. Similarly, rejection of pre-arrest bail to the accused, who are similarly involved in the crime, also cannot be considered as a valid ground for cancellation of pre-arrest bail granted to the other accused.

8. I have gone through the order passed by the learned Judge carefully. In para 6 of the order, he gave a table showing how much loan has been obtained by the 10 accused persons. In para 7, he has given reasons for granting pre-arrest bail. The reasons according to him are: they admitted that they have taken loans for purchasing vehicles; they admitted the liability to repay; they also paid some amounts; he came across statements of deductions of EMI from the accounts of the applicants/accused; necessary papers and documents were available in the office; nothing is required to be recovered at the instance of these persons and hence, custodial interrogation is not required. Moreover, the amount can be recovered by taking suitable legal action if they are defaulters. The only observation which is found irrelevant and perverse, is that the learned Judge has opined that as there is repayment, question of committing offences by the accused did not arise. The submissions of Mr.Ponda that such opinion is errorneous, is correct as the manipulated R.C. Books were produced as annexures to the loan applications. However, it appears from the record and submissions that photocopies are manipulated and not the actual seals and signatures. Therefore, the view taken by the trial Court that when such documents and papers are available, nothing would is required to be seized and no custodial interrogation is required, is a correct view. The learned Judge ought to have restrained from giving his opinion about non-commission of offence.

However, undoubtedly, in the cases of monetary transactions and cheating, if the accused is ready to repay the entire amount, then, it is a relevant factor. Moreover, in the present applications, the applicant company is not pressing an application against one of the accused i.e., Vinubhai Keshavlal Gajjar in Criminal Application No.909 of 2013 on the ground that he has repaid the entire amount. Cancellation of bail is not a weapon for money recovery. The Court has to consider whether really custodial interrogation of the accused is required for investigation or not so also it has to consider the gravity of the offence and the effect of pre-arrest bail on the witnesses.

9. In the case of **Rambabu Tiwari (supra),** the High Court had cancelled the bail application granted to the appellant on the ground that the co-accused did not oppose the prayer for cancellation and the Supreme Court set aside the order that this is not a relevant aspect. This case is not helpful to the present applicant.

10. In **Manjit Prakash (supra),** the Supreme Court has held that the irrelevant material so considered which adds to the vulnerability of the bail order should be of a substantial nature and is not of a trivial one.

11. The cases of **Dinesh M.N. (SP) vs. State of Gujarat (supra) and Narendra K. Amin (Dr.) vs State of Gujarat & anr. (supra),** are in the murder case of Sohrabuddin Shaikh, in which also the hon'ble Supreme

Court held that the Court dealing with the cancellation of bail is required to find that the irrelevant material is of substantial nature or not. If it is so, then the order is perverse and illegal and is to be cancelled. While granting bail, the Sessions Court has considered the shady reputation and criminal record of the deceased, which is irrelevant material. In the said two cases, the High Court had cancelled the order of granting bail to the applicants/accused on the ground of perversity and the Supreme Court has confirmed the order.

12. In the case of **Arulvelu & anr. (supra),** the Supreme Court has given different dictionary meanings of the word 'perverse'. After going through all these rulings, the meaning of 'perverse' in this context can be culled out as not to take into account the relevant factors and if substantial irrelevant factors are considered while deciding the order, then the order is illegal and perverse.

13. In the present case, it is to be noted that one Kiran Mahajan, who was in the employment of the applicant company is the principal culprit and key person, who verified the documents and approved the loans. He was taken in custody by the police and other two borrowers were also taken in custody and they are released on bail subsequently. Considering the modus operandi, the trial Court has rightly granted pre-arrest bail.

14. Moreover, the parties agree that arbitration proceedings in respect of the recovery of money is going on and in the said proceedings, the respondents have submitted the application acknowledging the liability of the loan.

15. In these circumstances, all the Criminal Applications are rejected. However, Criminal Application No.909 of 2013 is disposed of as not pressed.

(MRS.MRIDULA BHATKAR, J.)