

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

CRIMINAL WRIT PETITION NO.280 OF 2016

Rajendra s/o Raosaheb Tambhale,
Age 38 years, Occu. Service,
R/o Aurad (Shahajani),
Taluka Nilanga, District Latur

..Petitioner

Versus

The State of Maharashtra
through P.S. Aurad (Shah.),
Taluka Nilanga, Dist. Latur

..Respondent

Mr Sachin S. Deshmukh, Advocate for petitioner
Mr R.V. Dasalkar, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th March 2016

PER COURT

Heard.

2. The present petitioner is an accused in Crime No.41 of 2015 registered with Aurad (Shahajan) Police Station, District Latur, for the offence punishable under Section 409 of Indian Penal Code, on 24th September 2015, for an alleged incident dated 1st April 2012 to 31st March 2014.

3. It is upon audit of Agricultural Produce Market Committee, Aurad (Shahajani), (hereinafter referred to as "APMC" for brevity) of which the petitioner was employee, it was noted that the petitioner along with two other co-accused though have collected APMC cess and the market charges during the above period, have not deposited the same and retained the same.

4. In this background, the petitioner approached the learned Sessions Court for grant of pre-arrest bail vide Misc. Criminal Application No.53 of 2015 along with other co-accused.

5. The said application came to be allowed by order dated 17th October 2015 with following observations :

“1. The application is allowed.

2. In the event of arrest of applicants/accused (1) R.R. Tambhale, (2) R.D. Narwade and (3) R.N. Telang in Cr. No.41/15 registered with P.S. Aurad Shahajani of an offence punishable u/sec. 409 of I.P.C., they be released on bail on furnishing P.R. bond of Rs.15000/- each with surety in like amount till completion of investigation and if charge sheeted till conclusion of trial on following conditions.

3. As per their assurance, they are directed to hand over the keys and relevant record with them to the A.P.M.C. Aurad forthwith.

4. They should attend P.S. Aurad Shahajani on every Monday in between 10.00 a.m. to 12.00 noon till completion of investigation and cooperate with the investigation and also produce the documents as asked by Investigating Officer provided it in their custody.

5. Inform concerned P.S., accordingly.

5. An application under Section 439 (2) of Cr.P.C. for cancellation of bail came to be moved by the Investigating Officer vide Criminal Application No.70 of 2015 on the ground that the conditions

incorporated in the order dated 17th October 2015 granting pre-arrest to the present petitioner were not honoured. Learned Sessions Court, by order dated 5th February 2016 has cancelled the bail of the present petitioner along with other co-accused, as such present writ petition under Article 227 of the Constitution.

6. Mr Deshmukh, learned Counsel for the petitioner, while trying to make out the case for quashing of the order, by which the pre-arrest bail of the petitioner was cancelled would urge that the petitioner's bona fides are writ large, as the petitioner has already deposited the amount of Rs.28,303/- on 19th June 2015, which was found to be his share of defalcation. He would then urge that the petitioner was under suspension from 30th November 2014 and as such, was not in possession of any record, as the charge was immediately handed over to one employee of the APMC. According to him, in the above background, the petitioner has hardly any control over the record of the APMC and as such, the condition that was incorporated while granting pre-arrest bail in his favour was upon incorrect information provided to the learned Sessions Court. He would submit that practically it is impossible for the petitioner being under suspension to have access to the record of the APMC and to hand over the same to the Investigating Officer in compliance with the order dated 17th October 2015 granting pre-arrest bail in his favour. According to him, the order granting pre-arrest bail in his favour came to be cancelled without considering the above factual matrix.

7. Learned A.P.P. opposed the petition on the ground that when the initial pre-arrest bail was granted on 17th October 2015, the fact

that the petitioner was not in custody or was not in a position to deposit the record for the reason of his suspension was well within his knowledge, still misrepresentation was made before the learned Sessions Court, while praying for grant of pre-arrest bail. He would then urge that the petitioner cannot take benefit of his own wrong and prayed for rejection of the petition.

8. With the assistance, I have perused the entire record including that of allegations made in the F.I.R.

9. It is not in dispute that when the petitioner applied for pre-arrest bail along with two other accused persons, had made represented before the learned Sessions Court that in case pre-arrest bail is granted in their favour, the petitioner will be handing over the keys and the record to the Investigating Officer or the APMC. The said undertaking perhaps is based on the fact that all the three co-accused have not handed over the keys and record to APMC. An undertaking to that effect came to be recorded by the learned Sessions Judge while granting pre-arrest bail in favour of petitioner on 17th October 2015.

10. It is upon the application being moved by the Investigating Officer for cancellation of bail for non-compliance of the condition as regards depositing the record, the petitioner by way of after thought has come forward with a plea that he was suspended in 2014 and when the pre-arrest bail was ordered, he was not having any access to the record of the APMC.

11. In my opinion, the claim as sought to be put forth by the petitioner in support of prayer for quashing of order of cancellation of bail, does not call for any interference in extra-ordinary jurisdiction, as nothing illegal or contrary to the law could be noticed in the order passed by the learned Sessions Judge cancelling the pre-arrest bail in exercise of powers under Section 439 (2) of Cr.P.C. The petitioner is trying to take benefit of his own misdeeds and is not intending to honour the undertaking which was formed to be basis for releasing him on pre-arrest bail by the learned Sessions Judge.

12. As such, present petition being sans merit, stands rejected.

(N.W. SAMBRE, J.)

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