

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1749 OF 2016

Subhash S/o Ramgopal Bharuka,
 Age : 63 years, Occupation : Business
 and Agriculture, R/o Kannad,
 Taluka : Kannad,
 District : Aurnagabad

.. Applicant
 (Orig. Complainant)

Vs.

1] Sahebrao S/o Bhaginath Zalte,
 Age : 51 years, Occu.: Agriculture,
 R/o Khansari Parisar, Kannad,
 Tq. Kannad, Dist. Aurangabad .. **Orig. Accused**

2] The State of Maharashtra (Formal party) .. Respondents

Mr. D.S. Bharuka, Advocate for the applicant
 Mr. A.S. Shinde, A.P.P. for the respondent/State

CORAM : N.W. SAMBRE, J.
DATE : 06/06/2016

ORAL ORDER :

Heard Mr. Bharuka, learned counsel for the
 applicant/original complainant at length.

2. It is the case of the applicant that the
 applicant is the owner of land gat no. 226 of village

Jaitapur having area of 2 Hector 4 R out of total area of 4 Hector 8 R. According to the present applicant, the said land was purchased by him from the non-applicant/accused, who in turn again sold the same to a third person, resulting into registration of the crime and filing of chargesheet.

3. Mr. Bharuka, learned counsel for the applicant then invited my attention to the plaint in Regular Civil Suit No. 66 of 2011 pending before the Court of Civil Judge Senior Division, Kannad, in which the injunction is claimed to be operating in favour of the applicant. It is their claim that the non-applicant/accused has stolen the sugar-cane crop from the aforesaid field of the applicant, resulting into the registration of the crime vide crime no. 13 of 2016, in which the learned Additional Sessions Judge, by recording wrong set of facts, has granted injunction in favour of the non-applicant. So as to substantiate his contention, the learned counsel has invited my attention to the earlier history of the litigation qua the conduct of the non-applicant accused and the fact as regards the operation

of interim injunction in favour of the present applicant against the respondent/accused.

4. According to Mr. Bharuka, learned counsel for the applicant, for the recovery of the material and so as to carry proper investigation, custodial interrogation of the respondent/accused was necessary and as such the Court below i.e. the Additional Sessions Judge-5, Aurangabad has committed error in granting pre-arrest bail to the respondent / accused.

5. Learned A.P.P. supports the arguments.

6. With the assistance of learned counsel for the parties, I have perused the documentary evidence as are placed on record and the order impugned passed by the learned Additional Sessions Judge granting pre-arrest bail to the respondent-accused. There are two material reasons furnished by the learned Additional Sessions Judge while granting bail to the respondent / accused :

(i) Operation of injunction in favour of the accused (wrongly observed, as the injunction is operating in favour of the present

applicant)

(ii) That in case if the sugar-cane crop was stolen from the field of the applicant and claimed to have been sold to the sugar factory, the proper documentary evidence to that effect is very much available on record.

7. It is then required to be noted that there exists a civil dispute between the parties and the civil suit bearing no. 66 of 2011 is already pending. Merely because the Additional Sessions Judge has wrongly observed that the injunction was operating in favour of the accused person, will not entail this Court to exercise the jurisdiction of cancelling the bail by arresting the freedom of an individual, once the Court below has exercised its discretion. The Court below has exercised its discretion based on two material, of which one was found to be incorrect; still in my opinion, the order of grant of pre-arrest bail can be sustained on another reason forwarded by the learned Additional Sessions Judge.

8. For the aforesaid reasons, in my opinion, no case for interference/cancellation of pre-arrest bail granted by the learned Additional Sessions Judge is made out. The Application as such is rejected.

[N.W. SAMBRE]
JUDGE

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