

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

CRIMINAL APPLICATION NO. 2882 OF 2015

Mahesh Nagari Patsanstha Maryadit,
Bhingar, through its manager
Shri. Pravin Dattatraya Bhokare,
Age: 36 years, R/o. Plot No. 29,
Amay Nagar Khalewadi, Bhingar,
Tq. & Dist. Ahmednagar.

...Applicant

versus

The State of Maharashtra,
Through Incharge Police Inspector,
Kotwali Police Station, Ahmednagar
Tq. & Dist. Ahmednagar & ors.

...Respondents

.....
Mr. V.D. Sapkal, Advocate for applicant
Mr. K.D. Munde, A.P.P. for respondents/State
Mr. R.R. Karpe, Advocate h/f Mr. S.D. Munde, Advocate
for respondent No. 3
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CORAM : N.W. SAMBRE, J.

DATE : 17th FEBRUARY, 2016

ORAL ORDER :

Leave to amend. Amendment be carried out forthwith.

2. This application is by the applicant, who is Credit Co-operative Society and is pursuing the application for cancellation of bail granted to respondent No. 3 Sunil Gangadhar Dahale in the offence bearing Crime No. I-109 of 2015 registered with Kotwali Police Station, Ahmednagar for the offence punishable under

Sections 418, 420 read with Section 34 of Indian Penal Code, under the provisions of Section 439(2) of Code of Criminal Procedure, through its Manager, who is authorized to file present application.

3. The facts as are giving rise for filing the present application are as under :-

The applicant society is doing the business of sanctioning and disbursing loan against gold. Present respondent No. 3 has pledged certain gold and taken loan from the applicant society. During the enquiry, it was noticed that gold as was pledged by respondent No. 3 was found substandard or low weight. Over valuation of the gold by the accused was found to be basis for giving loan to respondent No. 3. The offence, as such, came to be registered against present respondent No. 3 vide Crime No. I-109/2015 for the offence punishable under Section 418, 420 read with section 34 of Indian Penal Code.

4. Learned Sessions Court granted regular bail to the respondent No. 3 on 27/05/2015 exercising powers under section 439 of Criminal Procedure Code, which order is under challenge/for cancellation of bail.

5. Mr. Sapkal, learned Counsel for the applicant made two- fold contentions; (a) that it is an admitted fact on record that respondent No. 3 has pledged gold, which is already seized in crime in question and has obtained loan and (b) the loan that was obtained was not in proportionate to the valuation of the gold, as quality of gold was substandard and in some cases, weight of gold was low, valuer in connivance of present respondent No. 3 has given higher valuation. According to him, the offence is an economic one and the Apex Court directed that, such offences are required to be viewed differently than other routine offences, as same has impact over the economy. According to him, the applicant, being Credit Co-Operative Society, loan that was obtained by respondent No. 3 by playing fraud on the applicant-bank has deteriorated its financial condition, and as such, sought to press into service the grounds referred supra. The next submission of learned Counsel for the applicant is that, while moving application for grant of regular bail before learned Sessions Court, specific statement has been made by the respondent No. 3 in his application that he is ready and willing to deposit the entire amount of loan for his release on regular bail. According to him, though such pleadings were raised, however, learned Sessions Court has overlooked the same and has granted bail imposing simplicitor condition without directing deposit of loan amount. The third submission of learned Counsel for the applicant is

that, other two accused in the crime though moved the applications for grant of regular bail alongwith present respondent No. 3 before the learned Sessions Judge, instead of taking all three matters together, has dealt with the application of respondent No. 3 granting bail by an order dated 27/05/2015 and posted other two matters arising out of the same crime on 28/05/2015 and has rejected the said applications which were based on the same set of facts of the same crime with lesser gravity. He would then urge that, this approach of learned Session Court is also required to be considered as compelling and supervening circumstances for cancellation of bail. He would then submit that, even if respondent No. 3 is ready to deposit loan amount today, the applicant will have no objection in continuing respondent No. 3 on bail.

6. Mr. Karpe, learned Counsel for respondent No. 3 would strenuously urge that, respondent No. 3 was subjected to custodial interrogation and thereafter he was released on regular bail. He would then invite the attention of this Court to the order passed in Criminal Application No. 2624/2015 pointing out the circumstances under which the bail granted can be cancelled. He has also invited my attention to the judgment of Apex Court in the matter of **Dolat Ram and ors. Vs. State of Haryana** reported in **(1995) 1 Supreme Court Cases 349** and in the matter of **Sanjay Chandra Vs. Central**

Bureau of Investigation reported in **AIR 2012 Supreme Court 830**.

He would submit that, bail once granted, need not be cancelled in a routine manner unless exceptional circumstances are made out. He would then urge that, if the gold which was pledged by respondent No. 3 to the Bank is released in his favour, respondent No. 3 is ready and willing to deposit the entire loan amount. According to him, once the investigation in the matter is over and chargesheet is filed, this Court should be very slow in interfering with the liberty granted to respondent No. 3.

4. Learned A.P.P. assisted the Court in the matter and submitted that the Court may pass appropriate order.

5. I have perused the entire investigation papers and considered the rival submissions of the parties in the background of the same.

6. What is noted in the present case is, present respondent No. 3 along with one Bhosale, who was appointed as Valuer of the applicant society has played fraud by overvaluing gold ornaments which were pledged with the applicant society for obtaining loan and has withdrawn the amount of loan, to which he was, in law, not entitled to. Apart from above, it is to be noted that during the

investigation, the fact was very much verified as regards valuation of the gold and upon discovery of fraud, respondent No. 3 came to be booked in the crime in question.

7. Keeping in mind the liberty as was granted by learned Sessions Court in favour of respondent No. 3 by an order dated 27/05/2015, a query is made by this Court to respondent No. 3 that whether he is ready and willing to deposit the amount of loan, which is outstanding against him as on date. While responding to the above referred query of the Court, learned Counsel for respondent No. 3 submits that it is only in case if the gold, which is *muddemal* property seized in the crime in question, is released in his favour, he will be in a position to repay the loan amount.

8. The other submissions as are sought to be canvassed as regards the repayment of loan is concerned, this Court is require to consider that obtaining of loan and repayment thereof is not disputed by respondent No. 3. The nature of offence as has been alleged has an economic colour. In my opinion, Mr. Sapkal, learned Counsel for the applicant was right in pointing out that the applicant Credit Co-operative Society's financial condition has deteriorated in view of large scale fraud, as was discovered, for which present respondent No. 3 is a beneficiary.

9. It is further required to be noted herein that while moving the application for grant of bail, present respondent No. 3 has specifically come out with the case that he is ready and willing to deposit the amount of loan to the present applicant bank, however, learned Sessions Court has lost sight of such pleadings raised by respondent No. 3 and has proceeded to allow the application without incorporating any condition about deposit of the amount.

10. The above referred aspect is in favour of the applicant and against respondent No. 3, particularly when respondent No. 3 volunteered to deposit the amount and at this stage, he is avoiding his responsibility to repay the loan amount.

11. The other aspect to which attention of this Court was invited by Mr. Sapkal, learned Counsel for the applicant is, the same Judge in Criminal Application No. 676 of 2015 granted regular bail to present respondent No. 3 on 27/05/2015, however on the same set of facts, on the very next day, in the same crime, rejected prayer for grant of regular bail of other accused, pointing out that the offence is serious one. The above referred approach on the part of learned Judge speaks voluminous in the matter.

12. In the above referred background, in my opinion, there is strong case made out by applicant for cancellation of bail. Though learned Counsel for respondent No. 3 has invited attention of this Court to the observations made by this Court in Criminal Application No. 2624 of 2015 based on the judgment of Apex Court in the matter of **Sanjay Chandra** (supra), however the observations by this Court in the said application were based on the offence, as has been alleged in the said application, which was not economic offence, whereas in the present case, it is an economic offence. The Apex Court in the matter of **Nimmagadda Prasad vs. Central Bureau of Investigation**, reported in **AIR 2013 SC 2821** has observed in paragraph-28 thus :

"28. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

13. In that view of the matter, in my opinion, there are compelling and supervening circumstances which contemplates and call for cancellation of bail granted to respondent No. 3. Hence, I

pass the following order:-

The bail granted by learned Sessions Court on 27/05/2015 in Criminal Misc. Application No. 676 of 2015 in Crime No. I-109 of 2015 registered with Kotwali police station, Ahmednagar for the offence punishable under Sections 418, 420 read with Section 34 of Indian Penal Code is hereby cancelled. Respondent No. 3 Sunil Gangadhar Dahale shall surrender his bail forthwith.

14. At this stage, learned Counsel for respondent No. 3 submits that since present order passed by this Court amounts to curtailing his liberty, which is guaranteed as fundamental right under the Constitution, the order be stayed for period of four weeks. Mr. Sapkal, learned Counsel for the applicant submits that since respondent No. 3 is an accused, his liberty can always be curtailed by adopting procedure of law prescribed, which is complied with in the present matter.

15. In my opinion, once present respondent No. 3 was set at liberty for last seven months, it will be appropriate to stay the effect and operation of this order for period of four weeks. The above order is passed keeping in mind the plea raised by respondent No. 3 that he intend to approach the Apex Court.

16. The application stands allowed in above terms.

[N.W. SAMBRE, J.]

Tupe/17.02.2016