

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

CRIMINAL APPLICATION NO.5251 OF 2015

Mohammed Shah s/o Diwan Shah
Fakir, Age 75 years, Occu.Agri.,
Mutawalli of Nabi Shah Masjid
R/o Azizpura, Dharur, Taluka Dharur,
District Beed

..Applicant

Versus

1. The State of Maharashtra
through A.P.P. for Police Station
Dharur City, Taluka Dharur,
District Beed and ors.
2. Laxman Devidas Lokare,
Age 55 years, Occu. Agri.,
R/o Patil Galli, Dharur,
Taluka Dharur, Dist. Beed
3. Pradeep Ganpatrao Lokare,
Age 55 years, Occu. Agri.,
R/o Patil Galli, Dharur,
Taluka Dharur, Dist. Beed
4. Swarup @ Saurabh s/o Pradeep
Lokare, Age 25 years, Occu.Nil
R/o Patil Galli, Dharur,
Taluka Dharur, Dist. Beed
5. Sadanand Raghunath Kendre,
Age 58 years, Occu. Press Reporter,
R/o Patil Galli, Dharur,
Taluka Dharur, Dist. Beed

..Respondents

Mr S.A.P. Quadri, Advocate for applicant
Mr S.M. Ganachari, A.P.P. for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 25th January 2016

PER COURT

Heard.

2. The respondents No.2 to 5 herein were granted pre-arrest bail by the Additional Sessions Judge, Majalgaon by an order passed below Exh.1 in Misc. Criminal Application No.58 of 2015 on 12th June 2015 of which cancellation is sought by the present applicant, complainant.

3. It is the case of the applicant - complainant that Crime No.40 of 2015 for offences punishable under Sections 379, 427 read with sec.34 of Indian Penal Code was registered against the present respondents No.2 to 5. Learned Counsel for the applicant seeking cancellation of bail would urge that the Court below has committed an error by granting bail on the ground that the respondents No.2 to 5 herein are in settled possession of the suit property.

4. Mr Quadri, learned Counsel for the applicant, complainant so as to substantiate the same has invited attention of this Court to the panchnama drawn by Survey Inspector (Revenue) and report submitted on 9th September 2015. In addition, he would urge that learned Sessions Court has failed to appreciate the documentary evidence and written notes, as were filed opposing the prayer for grant of pre-arrest bail. He would then urge that as there is prima facie involvement of respondents No.2 to 5 in commission of crime in question, their application for quashing the F.I.R. moved in Criminal Application No.4186 of 2015 was not allowed, rather permitted to be withdrawn on 8th January 2016, by the Division Bench of this Court and as such, according to him, the pre-arrest bail granted to respondents No.2 to 5 be cancelled.

5. From the record, learned A.P.P. tried to assist the Court.
6. Perused the order granting pre-arrest bail.
7. There appears to be history to the litigation in question, as in 1953, the predecessor of the applicant, who claimed to be Mutawalli had filed a suit for possession, which came to be dismissed in 1957 and no further appeal was carried against the said order. Apart from above, though Mr Quadri was right in pointing out that the revenue entries speak of possession of present applicant, however, such revenue entries were required to be considered for fiscal purpose, as is settled law.
8. Learned Sessions Judge has considered all the above aspect of the matter and has proceeded to grant pre-arrest bail in favour of respondents No.2 to 5.
9. It is not the case that the accused have tried to misuse the liberty or they were not entitled for such protection, pursuant to the threats, if any to the applicant.
10. In my view, no case for cancellation of bail under Section 439 (2) of the Cr.P.C. is made out. As such, application stands rejected.

(N.W. SAMBRE, J.)