

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION NO.35 OF 2015

(State of Maharashtra, through the Police Station Officer, PS Gadchiroli ..vs.. Mr. Vijay s/o Vasantrao Kurewar)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 17-02-2016

Heard Shri S.S. Doifode, learned Additional Public Prosecutor for the applicant/State of Maharashtra and Shri Atul Pande, learned Advocate for the non-applicant.

2. The State has approached this Court under Section 439 (2) of the Code of Criminal Procedure praying that the order passed by the Sessions Court on Bail Application No.56/2015 on 11-03-2015 granting bail to the non-applicant and directing his release, having been arrested for the offences punishable under Section 420 of the Indian Penal Code, be set aside.

3. Crime No.151/2014 came to be registered by the applicant against the office bearers of Sairam Bahuddeshiya Gramin Vikas Sanstha on the accusation that they had shown bogus admissions of students in the institution administered by the Sanstha and have duped the State exchequer of huge amount by seeking

scholarship fees and tuition fees for those dummy students. The applicant is the Secretary of the Sanstha. According to the prosecution, the misappropriation is of about Rs.2 Crore.

4. The applicant filed application before the Sessions Court seeking pre-arrest bail. The learned Sessions Judge allowed the application by the order dated 11-03-2015 recording that *prima facie* it appears that Shri Rohit Bommawar (President of the Sanstha) and Shri Suraj Bommawar (Treasurer of Sanstha) have committed the offence with the help of Principal of the college and the applicant did not play any role in collecting the various documents from the various students for showing their admissions in the college. The learned Sessions Judge recorded that the applicant is not the beneficiary of alleged crime and custodial interrogation of the applicant is not necessary for investigation.

5. The State of Maharashtra has come up with the grievance that the learned Sessions Judge has not considered the material on the record and without adverting to the relevant aspects has directed release of the non-applicant on bail. According to the prosecution, the non-applicant submitted fake, forged and fabricated application forms of 205 students to the Integrated Tribal Development Project Office, Gadchiroli. The bank

accounts of the students were bogus, signatures on application forms are forged, caste certificate and income certificate documents were forged and fabricated and relying on such forged and fabricated documents the office bearers of the Sanstha (including the non-applicant) submitted bills to the Project Officer and got released the amount of Rs.71,57,125/- towards tuition fees, scholarship and maintenance allowance of the dummy students.

Shri S.S. Doifode, learned Additional Public Prosecutor has pointed out the statements of Kelichand Jankiram Zade, Ravindra Rambhau Kalsar and Prakash Narayan Awathare which are recorded during investigation. These persons have specifically named the non-applicant and co-accused showing the involvement of the non-applicant. The learned Additional Public Prosecutor has submitted that the charge-sheet against the non-applicant has not yet been filed.

6. Shri Atul Pande, learned Advocate for the non-applicant has submitted that the application filed by the applicant praying for cancellation of bail granted to the non-applicant, cannot be considered as there are no allegations against the non-applicant that he has interfered or attempted to interfere with due course of administration of justice or has misused the liberty granted or there is possibility of his absconding. To support the submission, the learned Advocate has relied

on the judgment given by the Hon'ble Supreme Court in the case of ***Hazari Lal Das vs. State of West Bengal and another*** reported in ***AIR 2010 SC 91***. It is submitted that the non-applicant is a law abiding citizen and he has not been involved in any other crime. It is further submitted that after release of the non-applicant on bail, nothing adverse has been reported against him. It is prayed that the application filed by the State of Maharashtra praying for cancellation of bail be dismissed.

7. The learned Additional Public Prosecutor has submitted that the applicant is seeking cancellation of bail granted to the non-applicant, not on the grounds referred by the learned Advocate for the non-applicant, but on the ground that the learned Sessions Judge has granted bail to the non-applicant ignoring the material and evidence placed on the record. Shri S.S. Doifode, learned Additional Public Prosecutor has relied on the judgment given by the Hon'ble Supreme Court in the case of ***Puran vs. Rambilas and another*** reported in ***(2001) 6 SCC 338*** and the judgment given by the Hon'ble Supreme Court in the case of ***Neeru Yadav vs. State of Uttar Pradesh*** reported in ***2015 Cri.L.J. 4862***.

8. In the judgment given in the case of ***Hajari Lal Das vs. State of West Bengal and another***, the Hon'ble Supreme Court has relied on the earlier judgment given

in the case of ***Dolat Ram and others vs. State of Haryana*** reported in (1995) 1 SCC 349, paragraph No.4 of which is relevant and reads as follows :

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

(emphasis supplied)

Shri Atul Pande, learned Advocate for the non-applicant made submissions relying on paragraph No.4

of the judgment given in the case of ***Dolat Ram and others vs. State of Haryana***. However, the grounds for cancellation of bail as discussed in ***Dolat Ram and others vs. State of Haryana***'s case are illustrative and not exhaustive as recorded by the Hon'ble Supreme Court itself in paragraph No.4 of the judgment. This aspect is considered by the Hon'ble Supreme Court in the case of ***Puran vs. Rambilas and another*** and highlighting that the instances referred by the Hon'ble Supreme Court in the judgment in the case of ***Dolat Ram and others vs. State of Haryana*** are illustrative and not exhaustive, in the case of ***Puran vs. Rambilas and another***, it is laid down that if the bail is granted ignoring the material and evidence on the record, then it may be a ground for cancellation of bail. This is again reiterated by the Hon'ble Supreme Court in the case of ***Neeru Yadav v. State of Uttar Pradesh***.

9. The conclusions recorded by the learned Sessions Judge are perverse and ignoring relevant evidence and material on the record. The accusations against the non-applicant and co-accused are of very serious nature that they have duped the State exchequer of huge amount of about Rs.2 Crore by claiming scholarship fees, tuition fees and other fees for bogus students, producing forged and fabricated documents.

10. In view of the above, I am satisfied that the order passed by the learned Sessions Judge granting bail to the non-applicant and directing his release, is unsustainable. The impugned order is set aside and the pre-arrest bail granted in favour of the non-applicant in connection with the crime registered against him for offence punishable under Sections 409, 420, 465, 471 and 473 read with Section 34 of the Indian Penal Code is cancelled.

At this stage, Shri Atul Pande, learned Advocate for the non-applicant prayed that this order be kept in abeyance to enable the applicant to take appropriate steps for challenging it. Looking to the gravity of allegations and the fact that the prosecution has not been able to file charge-sheet against the non-applicant though substantial time has lapsed, I am not inclined to grant the request made on behalf of the non-applicant. It is rejected.

JUDGE