

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO. 48 OF 2015

(STATE OF MAH. THR. PSO. PS, BORAKHEDI, DIST. BULDHANA...VS..SHRI N.T. UJJAINKAR)

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 : FEBRUARY 26, 2016.

Heard Shri M.J.Khan, A.P.P. for the applicant-
 State of Maharashtra and Shri N.B.Kalwaghe, advocate for the
 non-applicant(accused).

The State of Maharashtra has filed this
 application praying that the order passed by the learned
 Additional Sessions Judge on 20th May, 2005 granting pre-
 arrest bail to the non-applicant in the event of arrest in the
 crime registered against him for the offences punishable
 under Sections 409, 420, 468, 471, 166 and 167 of the Indian
 Penal Code be set aside and the pre-arrest bail granted to the
 non-applicant be cancelled.

The non-applicant is working as Talathi. The
 allegations against the non-applicant are that he has indulged
 in illegality while preparing and submitting the list of farmers
 who are eligible and entitled for the compensation from the
 State Government because of the loss caused to the farmers
 due to hailstorm. The allegation is that the non-applicant,
 who was required to investigate about the loss suffered by the
 farmers and prepare the list and submit it to the Tahsildar,
 has not discharged his duty properly and he has shown bogus
 cases during the period from 2012-2015 by forging the

documents. The learned A.P.P. has submitted that the non-applicant has been suspended on two occasions earlier and now departmental enquiry is also initiated against him. The learned advocate for the non-applicant has not disputed this fact. The learned A.P.P. has further submitted that the Tahsildar who was responsible for disbursing the amount of compensation has also been added as co-accused.

The learned advocate for the non-applicant has submitted that the application filed by the applicant praying for cancellation of bail is liable to be rejected in view of the fact that the applicant has not been able to point out that the situation which necessitates cancellation of bail is existing. In support of the submission, the learned advocate for the non-applicant has relied on the judgment given in the case of *Dolat Ram & others Vs. State of Haryana*, reported in **1995(1) SCC 349** and the judgment given in the case of *Puran Vs. Rambilas*, reported in **2001(6) SCC 338**.

The learned Additional Sessions Judge has observed that the amount which was disbursed to the farmers was directly deposited in their bank accounts and it is not the case of the prosecution that the non-applicant has misappropriated the amount and the amount is to be recovered from the non-applicant.

The learned Additional Sessions Judge has not considered all the relevant aspects and has granted pre-arrest bail being swayed by the submission made on behalf of the non-applicant that the amount is directly deposited in the bank accounts of the concerned farmers and that there is no allegation of misappropriation by the non-applicant and the

amount is not required to be recovered from the non-applicant. The impugned order is unsustainable as the learned Additional Sessions Judge has not adverted to the relevant points. Considering the proposition laid down in the judgment given in the case of *Puran* (supra) and in the judgment given in the case of *Niru Yadav Vs. State of Uttar Pradesh*, reported in **2015 Cri.L.J. 4862**, in my view, the impugned order is unsustainable and has to be set aside.

Hence, the following order :

- i) The order passed by the learned Additional Sessions Judge in Criminal Application (B.A.) No. 86 of 2015 on 20th May, 2015 is set aside.
- ii) The matter is remitted to the Sessions Court for considering the application filed by the non-applicant afresh.
- iii) As the non-applicant is protected by the impugned order, in my view, it would be appropriate that the non-applicant should be protected till the decision of the application by the Sessions Court.
- iv) The learned Additional Sessions Judge shall dispose of the application filed by the non-applicant within ten days.
- v) The non-applicant and the representative/advocate of the applicant shall appear before the learned Additional Sessions Judge, Malkapur on 4th March, 2016.

- iv) The non-applicant will not be arrested till the decision of the application by the Sessions Court.

The Criminal Application is **allowed** in the above terms.

The learned A.P.P. has submitted that the Tahsildar has also been added as co-accused in the crime registered in the matter, however, he is not aware as to whether the departmental enquiry is initiated against the Tahsildar or not.

Considering the gravity of the offence and the nature of allegations, the Competent Authority shall look into the matter and examine as to whether departmental enquiry should be initiated against the concerned Tahsildar.

The learned A.P.P. shall send copy of this order to the Collector, Buldana for information.

JUDGE