

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO.133 OF 2017

Mr. Harishchandra Vithu Govekar ... Applicant

Versus

State of Goa & Ors. ... Respondents

Shri D. Vernekar, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondents No.1 & 2.

Shri Pavithran A.V., Advocate for the Respondents No.3,4 & 5.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :- 31st August, 2017

Pronounced on:- 14th September 2017

ORDER :

Heard Shri D. Vernekar, learned Advocate for the applicant, Shri S.R. Rivankar, learned Public Prosecutor on behalf of the respondents no.1 & 2 and Shri Pavithran A.V., learned Advocate on behalf of the respondents no.3 to 6.

2. The applicant was invoking the jurisdiction of this Court under Section 482 Cr.P.C. to quash and set aside the order dated 12/05/2017 granting anticipatory bail in respect of the respondents no.3 to 6 and a direction to the respondents no.2 to forthwith arrest them for custodial interrogation in connection with the investigation in the C.R. No.23/2017 of the Anjuna Police Station.

3. It was the contention of Shri Vernekar, learned Advocate for

the applicant that the applicant had lodged the complaint dated 29/04/2016 in which he had alleged mismanagement of the funds and donation received by the Devasthan since the last more than 20 years and that pursuant to an application under the Right to Information Act, he had received information in respect of the accounts of the Devasthan to ascertain the extent of the misappropriation committed by the Managing Committee members. The assets of the Devasthan were being misused for the personal benefits of the Managing Committee members from time to time who had exploited the funds and income of the Devasthan for their personal benefits. On that basis, he had sought the registration of an FIR against the Managing Committee of the Devasthan. There were Auditor's Reports from time to time which indicated that the amounts of ₹6,20,000/-, ₹3,20,000/- and ₹2,30,000/- were not reflected in the accounts of the Devasthan. Apparently, the Books of Accounts were not available from 2011 yet surprisingly there was a reference to these Books in the Auditor's Report of 2016. The learned Additional Sessions Judge had not considered the written submissions placed on record and passed the impugned order in a matter of fact way. He relied in **Sudhir V/s. State of Maharashtra** [Criminal Appeal Nos.1286-1287 of 2015] and that in **Deepak Gupta V/s. State of Orissa** [2016 ALL MR (Cri.) Journal 482] to submit that this was a fit case to quash and set aside the order passed by the Additional Sessions Judge and

therefore the application had to be allowed.

4. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State submitted at the outset that the State had not challenged the grant of bail in favour of the respondents no.3 to 6. On his part he placed reliance in **State of U.P. Through CBI vs. Amarmani Tripathi** [2005(8) SCC 21] on the scope of cancellation of bail and advertent to the impugned order submitted that the application was premature. The respondents no.4 to 6 in respect of whom an order was sought in this application were not the Committee members at the relevant time but in the year 2016. There was no perversity in the impugned order and hence the application had to be dismissed. Shri Pavithran A.V., learned Advocate for the respondents no.3 to 6 adopted the arguments of Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State and reiterated that the respondents no.4 to 6 were not the Committee Members of the Devasthan during the stated period and they had assumed charge only from April, 2016. The acts of misappropriation alleged by the applicant in his complaint were much prior to the respondents taking over the management. There was no material even taking the complaint on its face value to show that the misappropriation of funds had taken place after the respondents had taken charge. It was also not the case of the applicant that any documents were denied to him. The crime, if any, was committed by the erstwhile

Committee. Last but not the least the petition under Section 482 Cr.P.C. had to show a manifest perversity in the impugned order which the applicant had failed to show and hence no interference was called for in the impugned order.

5. In **Sudhir** (supra), the Hon'ble Apex Court was concerned with the appeals directed against the common order passed by the High Court of Judicature at Bombay, Aurangabad Bench where the anticipatory bail granted by the Additional Sessions Judge, Jalgaon to the appellants relating to the offence punishable under Section 409, 420, 467, 468 and 477A read with Section 34 of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 was cancelled. Considering the facts of the case, the Hon'ble Apex Court considered the Constitution Bench judgment in **Shri Gurbaksh Singh Sibbia & Ors. V/s. State of Punjab** [(1980)2 SCC 565] laying down the guidelines relating to the grant of anticipatory bail and the principles regarding the cancellation of bail in **Bhadresh Bipinbhai Sheth V/s. State of Gujarat & Anr.** [2015 (9) Scale 403] where it was observed at para 23 as below:

“(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new

material or circumstances at any point of time.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case."

and in the context of the circumstances of the case, the gravity of the offence and the allegations of corruption and misappropriation of public funds and last but not the least the conduct of the appellants did the Apex Court hold that the High Court had rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon and did not deem it fit to disturb the cancellation of bail while dismissing the four appeals. This judgment with respect is clearly distinguishable and does not support the applicant's case for the cancellation of bail granted to the respondents No.4 to 6.

6. **Deepak Gupta** (supra), was in third successive bail application under Section 439 Cr.P.C. before the High Court of Orissa. He was taken in custody on 05.09.2013 and the first chargesheet was submitted on 31.12.2013 under Section 13(2) read with Section 13(1) (c) (d) of the Prevention of Corruption Act,

1988 and Sections 120-B, 409, 379, 420, 468 and 411 IPC with 25 other persons. The learned Special Judge(Vigilance), Keonjhar took cognizance of the offences. His first application for bail in the meantime was dismissed considering the nature of the offence, its magnitude and ramification and keeping in mind the principles of law laid down by the Hon'ble Apex Court. A supplementary chargesheet was filed against four more accused persons and thereafter the second bail application was moved by the petitioner on the ground that he was not concerned with any forgery or criminal breach of trust or cheating of any kind and was not in conspiracy with anyone. The same Judge once again rejected his second bail application on 14.11.2014 on the ground that considering the nature of offence, its magnitude as it was revealed from the records placed as well as its ramification, the period of detention of the petitioner in custody could not be taken as a change in circumstance and besides the scope of this petitioner resorting to abscondance and avoiding the process of law clearly stood. Besides, the possibility of absconding and tampering with the evidence at this stage was not at all ruled out and rejected the bail applications.

7. **Deepak Gupta** (supra), moved a third bail application and during the pendency of the application approached the Hon'ble

Apex Court on the rejection of the second bail application which was disposed off with a direction to the High Court to dispose of his application for bail. The same learned Single Judge took up the application who requested the Chief Justice to assign it to another Bench for consideration and accordingly it was placed before the other Judge. Once again on a consideration of facts of the case the learned Judge found that the alleged offence against the appellant had a serious adverse impact on the fabric of the society. It was of high magnitude indicating illegal admission to a large number of undeserving candidates to the medical courses by corrupt means and apart from showing depravity of character and generation of black money, the offence had the potential of undermining the trust of the people in the integrity of the medical profession itself. In that view of the matter, the bail application was rejected. Thus, this judgment too does not in any manner support the case of the applicant for the cancellation of Anticipatory Bail Application granted in favour of the respondents No.3 to 6.

8. Admittedly, the respondents no.1 and 2 had not challenged the grant of bail to the respondents No.3 to 6 who would have been the appropriate parties to seek for the cancellation of bail. In that context, Shri Rivankar, learned Public Prosecutor had relied in **Amarmani Tripathi** (supra), which dealt with the consideration in

the matter of cancellation of bail.

9. **Amarmani Tripathi** (supra), was an appeal by the State of U.P. seeking the cancellation of bail granted to the respondent by the High Court. The Hon'ble Apex Court dealt with the matters which are required to be considered in an application for bail and found that in the case at large, the High Court had failed to deal with the vast material placed by the CBI which clearly indicated that the accused had, at all material times, tried to interfere with the course of investigation, tampered with witnesses, fabricated evidence, intimidated or created obstacles in the path of the investigating officers and derailed the case. The High Court had granted bail being of the opinion that the extra judicial confession given by one of the co-accused may not stand the test of scrutiny by a judicial mind but that by itself was not sufficient to grant the bail. There was voluminous evidence collected by the CBI to show the involvement of the respondent, and his effort to interfere with the investigation of the case before the grant of bail and also after the grant of bail. He tried to change the course of investigation by creating false evidence of the marriage of M with AM after his release on bail. He had tried to threaten as well as win over the sister of the deceased and her mother by offering a bribe. The Police Officers, who were not toeing the line of the respondent was

transferred at his instance.

10. In **Amarmani Tripathi** (supra), it was also not in dispute that he was on bail in a kidnapping case, when he indulged in these activities, therefore, the High Court gravely erred in granting bail to the respondent in such circumstances. At the same time, the Hon'ble Apex Court found the position of his wife is somewhat different from the case of her husband. He being a politician and ex-Minister unlike she being a housewife. However, there was material to show that she had absconded for several months and surrendered only when bail was refused to her husband on the ground that she was absconding. Further when the matter was considered in entirety, with reference to the murder of M and the propensity of the husband and wife to pressurize and persuade others to act according to their wishes, there was reasonable ground for apprehension that if her husband alone was taken into custody, leaving her to remain outside, she may take over the task of tampering with the evidence and manipulating/threatening witnesses and therefore, interference was called for even in regard to the bail granted to her. In the circumstances, the High Court granted bail which was set aside and bail bond of the respondents were cancelled. This judgment would clearly shows that the applicant has not brought any material on record to show that the

respondents no.3 to 6 had in any manner tampered with or interfered with the course of investigation after their release in terms of bail by the learned Additional Sessions Judge in anticipation of arrest. No circumstances whatsoever were spelt out from the case to show that they were abusing or violating the terms of their release on bail as to order the cancellation of bail. Therefore, on consideration of the finding given by the learned Additional Sessions Judge in the impugned order and prima facie finding that the respondents No.3 to 6 were not in the Managing Committee at the relevant time when the alleged act of misappropriation took place prior to April 2016, no case whatsoever was made out by the applicant for interfering with the impugned order.

11. Besides, it was contended by Shri Pavithran, learned Advocate for the respondents No.3 to 6 that the applicant had failed to show that there was any manifest perversity committed by the learned Additional Sessions Judge in the order so as to call for an interference with the Petition under Section 482 Cr.P.C. A stray submission on behalf of the applicant as to how the new Committee could give the Books of Accounts of the previous years which were not available to the Auditors in the previous years are matters which would be the subject of investigation which as per the contention of Shri Rivankar, learned Public Prosecutor is still

underway. On that premise alone there is no justification for the applicant to seek for the cancellation of the bail when he had failed to account for the manner in which all or any of the respondents No.3 to 6 had violated the terms of bail in anticipation of arrest granted in their favour by the impugned order. As rightly submitted by Shri S. R. Rivankar, learned Public Prosecutor and Shri Pavithran A.V., learned Advocate for the respondents no.3 to 6, no perversity whatsoever is spelt out in the impugned order and therefore, i do not find any merit in the application which is hereby dismissed.

NUTAN D. SARDESSAI, J.

NH/MV