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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 180 OF 2015
WITH
APPP NO. 632 OF 2017

Mr. Chunilal Dayalal Fariya ..**Applicant**
Vs
1] The State of Maharashtra
2] Mr Ashok Sahebrao Sakpal ..**Respondents**

Mr. Sujit B. Shelar for applicant.
Mr. Vivek Kedar i/b Harshad M. Inamdar for respondent No.2.
Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.
DATE : 13th FEBRUARY 2018.

P.C.:

1] This is an application for cancellation of anticipatory bail granted to the Respondent No.2 by the learned Additional Sessions Judge, Thane by its Order dated 25.2.2015 in Bail Application No.2360 of 2014 in CR No.I-339 of 2014 registered with Rabodi Police Station, Thane under Sections 406, 420, 467, 468, 471, read with 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicant, the learned Counsel for the respondent No.2 and the learned APP. Perused the entire record.

3] The applicant Shri Chunilal D. Faria has lodged the First Information Report dated 15th November 2014. In the said report, it is stated that, the applicant is the owner of a chain of Supermarkets. The applicant was well acquainted with the co-accused Advocate Rajkumar Unhale since year 2006. He used to avail the services of Shri Rajkumar Unhale for dealing with various legal issues pertaining to his business. The co-accused Rajkumar Unhale had won complete confidence of the applicant. It is stated that the co-accused Rajkumar Unhale approached the aplicant in June 2010 and informed him that the land bearing Survey Nos.69, 70, 71 and 74 lying and situate at village Vavholi, Taluka Kalyan, District-Thane admeasuring about 23 acres is available for sale at the rate of Rs.28 to Rs.30 lacs per acre. That if an amount of Rs.1 to 1.5 Crore is paid to the landlord, he will immediately execute an agreement and the said land can be converted into non-agricultural use and thereafter can be developed. That the landlord will also give further time to make balance payment. The applicant found the said proposal beneficial and therefore he informed about the same to his brother-in-law namely Shri Hansraj Nisar. As the applicant was interested in the said proposal, on 11.7.2010, he along with his brother-in-law decided to visit the said land. Accordingly, the applicant, his son Nikit and his brother-in-law Shri Nisar went to the office of the co-accused- Rajkumar Unhale at Thane. At that place, Rajkumar Unhale introduced the co-accused Mr. Jeetesh More. The co-accused Rajkumar Unhale and Jeetesh More thereafter showed the said land to the applicant and his family members. The applicant thereafter decided to purchase the said land. Thereafter in the third week of July 2010, a meeting was conducted at the office of Advocate Rajkumar Unhale. In the said meeting the applicant, his younger brother Pravin, the co-accused Rajkumar Unhale, Jeetesh More and one more person were present. The co-accused Rajkumar Unhale introduced the said person as a Police Inspector Shri Ashok Sakpal (Respondent No.2) and informed that he was working at Kopri Police Station, Thane City. The Respondent No.2 Shri Sakpal thereafter informed the applicant that the owner of the said land is Mr. Ramakant M. Mhatre and the said entire land stands in his name, use and occupation. That there was no dispute or litigation about the said land and was free from all encumbrances. That the landlord did not attend the said meeting. The co-accused Jeetesh More and Respondent No.2 Shri Sakpal informed the applicant that the entire transaction was being looked after by

Shri. Jeetesh More and the Respondent No.2. They also informed the applicant that the said land would be available at the rate of Rs.28 lacs per acre and for a total consideration of Rs.6,44,00,000/-. It was further decided that at the time of measurement of the said land, if it was noticed that the area of the land was either less or more, the amount would be adjusted and to be paid accordingly. The co-accused- Rajkumar Unhale and Respondent No.2 Shri Sakpal shouldered the entire responsibility of the said transaction. That on 27.7.2010 the applicant along with his brother Pravin visited the office of the co-accused- Rajkumar Unhale. At that time the co-accused- Rajkumar Unhale, Respondent No.2 and co-accused Jeetesh More were present. As decided, the applicant thereafter gave the first installment of the said transaction to the co-accused Advocate Rajkumar Unhale. The applicanat paid an amount of Rs.50 lacs in total. He also handed over two cheques of Rs.15 lacs each bearing Nos.157921 and 157922 drawn on Jan Kalyan Sahakari Bank and also paid an amount of Rs.20 lacs in cash. The said two cheques were accepted by the co-accused- Rajkumar Unhale and the cash of Rs.20 lacs was accepted by the respondent No.2 Shri Ashok Sakpal. When the applicant demanded receipt of the same, the co-accused- Rajkumar Unhale took a print out of the receipt from his computer and affixed revenue stamp of rupee one on it. The co-accused Jeetesh More signed the said receipt on behalf of the landlord Ramakant Mhatre. When the applicant asked about the said signature, the co-accused- Rajkumar Unhale told the applicant that, the landlord Ramakant Mhatre (co-accused) has given power of attorney in favour of the co-accused Jeetesh More. Advocate Unhale handed over the said receipt to the applicant. That it was decided to give next installment on 29.8.2010 for the said transaction. On 29.8.2010 when the applicant visited the office of his Advocate i.e. co-accused- Rajkumar Unhale to pay the second installment, he informed the applicant that the landlord Ramakant Mhatre will remain present in the said meeting. Accordingly, the applicant, his son Hardik, brother-in-law Hansraj Nisar went to the office of the co-accused- Rajkumar Unhale. The co-accused-Jeetesh More was present there. The co-accused- Rajkumar Unhale informed the applicant that the landlord Ramakant More was unable to attend the said meeting, however, he would obtain written instructions from the landlord for publication of the notice in respect of the said land on the payment of Rs.1 Crore to the landlord. The applicant after believing in the words of the co-accused- Rajkumar Unhale, made the said payment of second installment of Rs.50

lacs to him. The said payment was consisting of three cheques amounting to Rs.25 lacs and a cash component of Rs.25 lacs. After receiving the said payment, co-accused- Rajkumar Unhale prepared a receipt on his office computer and the co-accused Jeetesh More signed the same on behalf of the landlord- Ramakant Mhatre. The original receipt was retained by the co-accused- Rajkumar Unhale on the pretext that he would first take undertaking from the landlord for publishing a notice/advertisement and then hand it over to the applicant. That on 29.8.2010 the co-accused- Rajkumar Unhale informed the applicant that, he had obtained the N.O.C for publishing a public notice wherein the co-accused Ramakant Mhatre has stated that he has received an amount of Rs.1 Crore. That on 19.9.2010 the co-accused Rajkumar Unhale enquired with the applicant about further payment to be made to the landlord and accordingly the applicant paid an amount of Rs.30 lacs by cheques and Rs.20 lacs by cash to co-accused- Rajkumar Unhale. Thus the total amount of Rs.50 lacs i.e. Rs.30 lacs by cheques and Rs.20 lacs by cash was made. That the co-accused- Rajkumar Unhale after some time gave a phone call to the applicant and informed him that the landlord Ramakant Mhatre wants the entire amount in the form of cash. Accordingly the applicant took back the cheques of Rs.30 lacs and paid the amount in cash to the co-accused- Rajkumar Unhale. The applicant received another phone call from the co-accused- Rajkumar Unhale who informed the applicant that co-accused Jeetesh More is in urgent need of Rs.20 lacs and therefore the applicant paid Rs.20 lacs in cash to the accused- Rajkumar Unhale. The applicant thus paid Rs.70 lacs on 19.9.2010 to the co-accused- Rajkumar Unhale. That on 29.9.2010 the co-accused- Rajkumar Unhale handed over to the applicant the proforma of a public notice to be published in the newspapers. The said notice was thereafter published in the newspapers namely, Maharashtra Times and Daily Gavkari. The applicant thereafter requested the co-accused- Rajkumar Unhale to complete the sale agreement as he had made substantial payment of Rs.1.70 Crores. The co-accused- Rajkumar Unhale assured the applicant that he should not worry and the documentation pertaining to the said transaction would be completed in a short span. The co-accused- Rajkumar Unhale also gave guarantee about the said transaction. As the applicant was knowing the co-accused- Rajkumar Unhale since long, he bestowed full faith in him. That on 30.9.2010 the applicant again made payment of Rs.1 Crore by way of two cheques of Rs.50 lacs each drawn in the name of landlord Ramakant Mhatre. At that time the co-accused- Rajkumar Unhale informed the applicant that, the landlord Ramakant Mhatre (co-accused) wants the said amount in cash. The applicant requested co-accused- Rajkumar Unhale to keep the said cheques as security and complete the documentation as he would get the said cash in few days. After two to three days, the applicant made payment of Rs.50 lacs in cash to the co-accused- Rajkumar Unhale and took back one of the cheques earlier handed over to him. The second cheque of Rs.50 lacs was retained by the co-accused- Rajkumar Unhale.

The applicant was regularly making enquiry about the documentation with the co-accused- Rajkumar Unhale. In the month of November 2010 the co-accused- Rajkumar Unhale called the applicant and informed him that the documentation was over and for registration of the said documents, the landlord Ramakant Mhatre(co-accused) requires further amount of Rs.50 lacs. That accordingly on 17.11.2010 the applicant along with his son Hardik visited the office of Rajkumar Unhale. At that time, the co-accused Jeetesh More and another person by name Sandesh Kadam were present in the office of co-accused- Rajkumar Unhale. The applicant paid an amount of Rs.50 lakh to the co-accused- Rajkumar Unhale and also requested him to show the papers pertaining to the sale transaction. At that time the co-accused- Rajkumar Unhale informed the applicant that some work pertaining to the documentation was still pending and it will be completed in short span. The applicant thereafter requested for receipt of full payment of Rs.2.70 Crores from the co-accused- Rajkumar Unhale. The co-accused- Rajkumar Unhale gave a print out of the receipt from his computer, affixed revenue stamp of Rs.1/- on it and the co-accused Jeetesh More signed the said receipt for and on behalf of the landlord Ramakant Mhatre. The said receipt was thereafter handed over by the co-accused- Rajkumar Unhale to the applicant. The applicant was regularly requesting the co-accused- Rajkumar Unhale for completing the registration work and for the receipt from the landlord Ramakant Mhatre about the payment made through him. In the second week of December 2010, the co-accused- Rajkumar Unhale handed over a photo copy of the receipt dated 8.12.2010 to the applicant for an amount of Rs.2,70,00,000/- allegedly signed by the landlord Ramakant Mhatre. The applicant was regularly making enquiry about the documentation pertaining to the said transaction with the co-accused- Rajkumar Unhale and Jeetesh More. However, both of them were extending some or other excuses and were assuring the applicant that his work will be completed in a short span. In the said process, a period of about one and half years was elapsed. The applicant has made a total payment of Rs.2.70 Crores for sale transaction for said land.

In October 2012, a friend of the applicant by name Bapu Gaikar informed him that the land which was sold to the applicant by the landlord Ramakant Mhatre (co-accused) has been sold by him to Kishan Mulchand Chawla and other three persons. The applicant also received documents in respect of the said sale with Kishan Chawla and others. The applicant immediately met his Advocate, the co-accused- Rajkumar Unhale, to complete his sale transaction. The co-accused- Rajkumar Unhale informed the applicant that the broker Mr. Jeetesh More was avoiding registration. The applicant had suspicion about the bonafide of the co-accused- Rajkumar Unhale and therefore requested him to arrange a meeting with the landlord Ramakant Mhatre (co-accused). After repeated requests by the applicant, the co-accused- Rajkumar Unhale agreed to take him to the land owner.

That on 19.12.2012 the applicant, his son Hardik and the co-accused- Rajkumar Unhale went to meet the landlord Ramakant Mhatre. The co-accused- Rajkumar Unhale informed the applicant that Ramakant

Mhatre is working with the Revenue Department at Bhiwandi. However it was revealed that no person by name Ramakant was working there. The applicant was aware of the real address of Ramakant Mhatre as he had taken it from the agreement between Ramakant Mhatre and Kishan Chawala. When the applicant asked the co-accused- Rajkumar Unhale to give a phone call to the Ramakant Mhatre, he informed that he does not have mobile number of Ramakant Mhatre. The co-accused- Rajkumar Unhale thereafter gave a phone call at his office and enquired about the address and phone number of Ramakant Mhatre and informed the applicant that, the file of Ramakant is not traceable at his office. Thereafter Rajkumar Unhale informed the applicant that the landlord Ramakant Mhatre may, perhaps be, working in Bhiwandi Municipal Council and took him there. They received information that, a person by name Ramakant Mhatre was out of station and had been to Shirdi. The co-accused- Rajkumar Unhale tried to convince the applicant that it is the same Ramakant Mhatre. The co-accused- Rajkumar Unhale thereafter gave various excuses to the applicant and told him to return to Thane. At that time the son of the applicant Hardik informed the co-accused- Rajkumar Unhale that, Ramakant Mhatre resides at village Gundavali, Taluka-Kalyan and that they would go there to meet him, however, the co-accused - Rajkumar Unhale tried to avoid the same. At the persistent request by the applicant, the co-accused- Rajkumar Unhale accompanied him to village Gundavali, Taluka Kalyan. When the applicant and other persons entered into the house of Ramakant Mhatre, one person in their presence went out. The co-accused- Rajkumar Unhale deliberately did not inform the applicant that, he was the same Ramakant Mhatre. The son of applicant was parking his car outside the said house and informed the applicant that the person who just left the house on motorcycle was Ramakant Mhatre as he had seen his photograph on the agreement. The applicant thereafter asked to the co-accused- Rajkumar Unhale to give a call to co-accused- Ramakant Mhatre. The co-accused- Ramakant Mhatre came there. The applicant enquired with him about the transaction and also asked him as to why the documentation was not being completed. The co-accused- Ramakant Mhatre in turn questioned the applicant and denied any transaction with the him. When the applicant gave details about the amount and the persons involved in the transaction, Ramakant Mhatre informed the applicant that, the said sale transaction was between co-accused Jeetesh More, Police Inspector Ashok Sakpal Respondent No.2 and his wife Vaishali Sakpal by way of agreement for sale and for that he had received Rs.1 to Rs.1.25 Crore. He informed that the said agreement was subsequently cancelled and the entire amount has been returned. When the co-accused- Rajkumar Unhale informed the co-accused Ramakant Mhatre that he had entered into agreement with the applicant and the copy of the same is with him, Ramakant Mhatre told him that he does not know on which papers the co-accused- Rajkumar Unhale has taken his signatures. The applicant therefore told the co-accused- Rajkumar Unhale to convene a meeting with Respondent No.2, Police Inspector Shri Sakpal and co-accused Jeetesh More. That on 26.12.2012 the applicant, his son Hardik and co-accused-Rajkumar Unhale and applicant Jeetesh More went to Kopri Police Station and met Respondent No.2 Shri Sakpal. The Respondent No.2 informed the applicant that his money was safe with him and not to worry about the same. The applicant thereafter informed the Respondent No.2 that, as per the say of Ramakant Mhatre, he had received only Rs.1 to Rs.1.25 Crore and the said amount was returned by him and therefore how the amount was safe and with whom. At that time Respondent No.2 questioned co-accused Jeetesh More as to when the said amount will be returned to the applicant. The co-accused Jeetesh More looked at Respondent No.2 and co-accused- Rajkumar Unhale and said that "did I alone take that amount ?" The applicant thereafter was convinced that the co-accused- Rajkumar Unhale, Respondent No.2, Jeetesh More and landlord Ramakant Mhatre have jointly cheated him and have committed the criminal breach of trust thereby misappropriating and/or defalcating his amount of Rs.2.70 Crores. In the premise the FIR is lodged.

4] After lodgment of the said crime, the respondent No.2 filed the aforestated A.B.A. No.2360 of 2014 before the learned Additional Sessions Judge, Thane. The learned Additional Sessions Judge, Thane by its impugned Order dated 25.2.2015 was pleased to allow the said application.

5] The applicant herein i.e. the original complainant has preferred the present application feeling aggrieved by the same, questioning the correctness of the said Order and for quashing of the impugned Order dated 25.2.2015 passed in A.B.A. No.2360 of 2015. This Court issued notice to the respondent No.2 by an Order dated 3.7.2015 and by a subsequent Order dated 15.10.2016 granted interim relief thereby directing the Police, not to submit chargesheet as against the present respondent No.2. The present application was thereafter listed on various occasions for hearing and on majority occasions, at the request of respondent No.2 the matter was adjourned from time to time.

6] Mr. Shelar, the learned Counsel appearing for the applicant submitted that, the Trial Court has passed the impugned Order for the reasons which are not germane to grant pre-arrest bail to the respondent No.2 and was pleased to allow the said application on irrelevant grounds and by taking into consideration extraneous material. He further submitted that, the Trial Court has not taken into consideration the gravity of the offence and the impugned Order came to be passed only because the respondent No.2 is a Police Officer and will not indulge into tampering of evidence. He submitted that, perusal of the impugned Order would indicate that, the same suffers from total non-application of mind and the same is contrary to the basic tenetes of law. He submitted that the Order impugned herein is not only bad in law but perverse too. In support of his contention, he relied on decision of the Supreme Court in the case of Puran Vs. Rambilas & Anr., reported in 2001(3) Supreme 685. He therefore prayed that the impugned Order may be quashed and set aside.

7] Per contra, Mr. Kedar, the learned Counsel for the respondent No.2 vehemently opposed the application and submitted that the impugned Order dated 25.2.2015 is passed three years back and at such a belated stage the cancellation of anticipatory bail granted to the respondent No.2 would cause undue hardship and injustice to the respondent No.2. He submitted that on the date of alleged incident i.e. on 27.7.2010 the respondent No.2 was sick and did not attend the Office of the concerned Advocate. He submitted that, the respondent No.2 has been falsely implicated in the present crime for no reason by the first informant i.e. applicant herein. He submitted that the transaction between his wife and co-accused landlord Ramakant Mhatre is a separate and distinct transaction and the respondent No.2 has nothing to do with it. He submitted that in a recent decision, the principles pertaining to grant of bail and exceptions are reiterated by the Supreme Court. In support of his contention, he relied on the decision of the Supreme Court in the case of Dattaram Singh Vs. State of Uttar Pradesh reported in 2018 SCC OnLine SC 88 and prayed that the present application may be dismissed in limine.

8] A minute perusal of the record would reveal that, there are two documents i.e. Agreement for Sale dated 1.9.2010 (27.7.2010) and Deed of Cancellation of Sale dated 13.7.2011 on record. The first document namely Agreement for Sale which is executed between Smt. Vaishali Sakpal, the wife of the respondent No.2 and Shri Ramakant Mhatre, wherein it is stated that purchaser i.e. Smt. Vaishali Sakpal has paid the amount of Rs.1.00 Crore to the landlord by cheques and the said cheques have been issued by the applicant herein. The said document indicates that, the applicant herein was not made party to the said agreement and in his absence and behind his back the said document is executed. Thus in short the funds which were forwarded and/or given by the applicant for purchase of land in question to the respondent No.2 and other accused persons were diverted by him through his wife by executing a separate and distinct transaction by the Agreement for Sale dated 1.9.2010 (27.7.2010) and subsequently by a Deed of Cancellation dated 13.7.2011 the said earlier agreement was cancelled and an endorsement has been put by the co-accused Jitesh More that he has received Rs.50.00 lakhs by way of cheques from co-accused Smt Vaishali Sakpal.

It clearly appears from the record that, these two documents which are vital in nature are not taken into consideration by the Trial Court while granting anticipatory bail to the respondent No.2.

9] The learned Counsel for the respondent No.2 submitted that the prosecution did not produce the said two documents before the concerned Court and therefore the Trial Court might not have taken into consideration the said two documents.

However, a fact on record remains that, either the Investigating Officer did not produce the said two documents for consideration before the Trial Court at the time of hearing of the anticipatory bail application or if those documents had been produced, the Trial Court did not take into consideration the said documents and has lost the sight of said two vital documents.

10] It is to be noted here that, what appears to have been weighed in the mind of the Trial Court while for granting anticipatory bail to the respondent No.2, is stated in para-20 of the impugned Order which reads as under:

> "20] Now, the offence alleged is of cheating, forgery, using the forged document as genuine. Assuming for the sake of argument that the applicant was Police Inspector, his wife had transaction with original owner and further assuming that he was present in a meeting in the office of Advocate Unhale, his posting at Marol Police training center, shows that the investigation can not be hampered."

Thus it is apparent that the discretionary relief of granting anticipatory bail to the respondent No.2 was extended only because he is a "Police Inspector" and on the date of passing the Order was transferred to Marol Police Training Center and therefore the investigation cannot be hampered and nothing else.

11] At this stage, it will be useful to make reference to, two decisions of the Supreme Court namely (i) Puran Vs. Rambilas & Anr. reported in 2001 AIR SCW 1935 and (ii) Dinesh M.N. Vs. State of Gujarat reported in (2008) 5 SCC 66.

The Supreme Court in the case of Puran vs. Rambilas (supra) while laying down the parameters for cancellation of bail has held that, one such ground for cancellation of bail, would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons, such an order would be against principles of law. It is further held that the interest of justice would also require that such a perverse order be set aside and bail be cancelled. That therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected. The Supreme Court in para no.10 has held that, further it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation.

The Surpeme Court in the case of Dinesh M.N. Vs. State of Gujarat (supra) while relying on the ratio laid down in the case of Puran Vs. Rambilas has further held that even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

12] Perusal of the impugned Order would clearly indicate that, the said Order is passed by the Trial Court on irrelevant grounds and by taking into consideration extraneous material predominantly that the respondent No.2 is a "Police Inspector" and not by taking into consideration the vital documents available on record. Thus it is apparent that, the Trial Court has lost sight of the material which is already available on record and has proceeded to pass the impugned Order after taking into consideration extraneous material and/or facts which are not germane in deciding the anticipatory bail application and therefore the impugned Order is perverse in nature.

13] After perusing the impugned Order and the material available on record, this Court is of the considered opinion that the impugned Order dated 25.2.2015 deserves to be quashed and set aside. Accordingly the impugned Order dated 25th February 2015 passed by the Trial Court is hereby quashed and set aside and the present application is allowed.

The Respondent No.2 is directed to surrender before the Trial Court within a period of two weeks from today.

14] At this stage, the learned Counsel for the respondent No.2 submitted that the respondent No.2 would like to challenge the present Order before the Apex Court and therefore the effect and implementation of the present Order may be stayed for a period of 8 weeks. The learned Counsel for the applicant vehemently opposed the said prayer.

However, at the request of learned Counsel for the respondent No.2, the aforesaid Order is stayed for a period of four weeks from today.

15] In view of above Order, Criminal Application No.632 of 2017 for assigning and/or transferring the matter before this Court, does not survive and is accordingly disposed off.

(A.S.GADKARI, J.)