

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.75 OF 2020

	Arun s/o Shrikishan Agrawal	... Applicant
	Versus	
1.	The State of Maharashtra	
2.	Amol s/o Prakashappa Katkar	... Respondents

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.76 OF 2020

	Arun s/o Shrikishan Agrawal	... Applicant
	Versus	
1.	The State of Maharashtra	
2.	Santosh Pannalal Karwa	... Respondents

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.77 OF 2020

	Arun s/o Shrikishan Agrawal	... Applicant
	Versus	
1.	The State of Maharashtra	
2.	Bhaskar s/o Tatyaraao Khule	... Respondents

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Mr. M. R. Sonawane, Advocate for applicant in all the cases.
Mr. S. W. Munde, APP for respondent No.1 – State in all the cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th October, 2020

COMMON ORDER :

. All these three applications have been filed under Section 439(2) of the Code of Criminal Procedure read with Section 482 of the Code of Criminal

Procedure. Common order below Exhibit-1 was passed in Criminal Miscellaneous Petition Nos.180 of 2020, 176 of 2020 and 190 of 2020 on 25-06-2020 by learned Additional Sessions Judge-2, Jalna, whereby the bail applications filed by present respondent No.2 – original accused in all the cases came to be allowed. Respondent No.2 in all the cases have filed the said application under Section 438 of the Code of Criminal Procedure. All of them are the accused persons in Crime No.96 of 2020 registered with Sadar Bazar Police Station, Dist. Jalna for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code. Present applicant is the original informant.

2. The informant in his first information report had submitted that all 20 accused persons have cheated the Government and misappropriated the amount. The misappropriation is in crores of rupees and this has been done by not paying the Najrana amount to the Government.

3. Heard learned Advocate Mr. M. R. Sonawane for applicant in all the cases and learned Advocate Mr. S. W. Munde for respondent No.1 – State in all the cases.

4. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge failed to consider that the land bearing survey No.173 situated at Jalna is an Occupancy – II property, means it had restricted ownership. That property was granted to some persons under the provisions of

Hyderabad Inam Abolition and Cash Grants Act, 1959. Earlier the said property was standing in the name of accused Laxmanappa Tukaram Katkar and Rangnathappa Tukaram Katkar. The property then vested in Government. After the abolition of the Act, those two persons i.e. Laxmanappa and Rangnathappa ought to have paid the occupancy rights. The position of law is that the land could have been only given for cultivation, but the ownership would have remain only with the Government and the person occupying the said land could not have sold or transfer it, in any way, without the permission of the competent authority. Accused Laxmanappa and Rangnathappa purchased the said land in the year 1971 from one Devidas Vishwanath and Ambadas Vishwanath through a registered sale deed. The purchase of Laxmanappa and Rangnathappa was without permission. Thereafter, in the year 2008, some persons including the informant purchased 3 Hectare 20 R land. In fact, the 7/12 extract has no mention that the land is occupancy-II property. The purchasers had applied for conversion of that land to Non Agriculture and also for sanction of layout plan of the land. Those persons paid Najrana charges of around 88 lakhs for the said conversion, but it is the say of the informant that accused Rangnathappa and Laxmanappa in collusion with one Prakash Katkar and others sold the land without paying Najrana amount. They got the layout sanctioned and also their property register card has been opened. This all has been done to dupe the Government to crores of rupees and still the learned Additional Sessions Judge

has granted pre arrest bail to them. The said order is illegal and without application of mind. The learned Judge failed to consider that the Hon'ble the Apex Court as well as this Court have cautioned the Courts for grant of bail in respect of economic offences. The discretionary power has been used in arbitrary manner and, therefore, the said order deserves to be cancelled.

5. Taking into consideration the reasons given by the learned Additional Sessions Judge and also the contents of the FIR and other documents produced on record, it is not even necessary to issue notice to respondent No.2 in each case.

6. In ***State Through Delhi Administration vs. Sanjay Gandhi [1978 AIR 961]***, it has been observed by the Hon'ble Apex Court :-

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.”

7. In ***Sanjay Gandhi's*** case (Supra), the Hon'ble Apex Court has further observed :-

“Section 439(2) of the Code of Criminal Procedure confers jurisdiction on the High Court to Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done.”

8. It is to be seen from the impugned order that all the aspects have been covered in a detailed order. It appears that the litigation is going on at different levels with judiciary as well as the revenue authorities. Note of those litigations has been taken. After taking note of all those decisions by Deputy Collector, Collector, Divisional Commissioner, Aurangabad, the learned Judge has come to the conclusion that he does not find *prima facie* guilt in the applicants regarding cheating. Note of the fact is also taken that Rangnathappa and Laxmanappa had purchased the land after the abolition of the Hyderabad Inam Abolition and Cash Grants Act, 1959. When that purchase is in the year 1971,

the question would be whether at that time itself, they were required to pay the Najrana charges. There appears to be the order by Deputy Collector and the Collector allowing Rangnathappa and Laxmanappa to dispose of the property. Then, the question would again come as to whether the offences noted in the FIR are attracted or not. The learned Judge has also considered the other facts, and *prima facie* opinion has been given that accused - Rangnathappa, Prakash and Laxmanappa's actions may amount to offence under Section 406, 409 read with Section 34 of Indian Penal Code, but present respondent No.2 in each case appeared to be the subsequent purchaser and, therefore, it was opined that the custody of the applicants-accused is not at all required. When such a detailed order has been passed, no interference is required. It will have to be noted that the informant says that some other accused persons are also involved, but then it appears that he has used pick and choose method. Another aspect that is also required to be considered is that, merely because he had paid the Najrana, whether he would get an authority to lodge first information report stating that these accused persons have cheated Government. Learned Advocate for the applicant has tried to explain that any person can file first information report and when it is in respect of public money, then he has a right. But then whether such person can allowed to pick and choose certain persons and without adopting other proper remedy before the revenue authorities as well as under civil law, whether he can have a resort to the criminal law, is also required to be

considered and, therefore, the discretion that has been used by the learned Additional Sessions Judge is judicial discretion, which does not require any interference. It appears that since the applicant was required to pay lakhs of rupees for Najrana, he wants that present respondent No.2 in all cases to be behind bars. Such approach cannot be considered. There is no merit in the present applications. They deserve to be rejected. Accordingly, all the applications stand rejected.

[SMT. VIBHA KANKANWADI, J.]

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