

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.130 OF 2020

Arvindar Kaur w/o Tehalsingh Shahu

... Applicant

Versus

1. Preetpalsingh s/o Kamalsingh Shahu
2. Manpreetsingh s/o Kamalsingh Shahu
3. Kamalsingh s/o Sujansingh Shahu
4. The State of Maharashtra

... Respondents

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Mr. A. D. Hande, Advocate for applicant.
Mr. S. W. Munde for respondent No.4 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-12-2020

ORDER :

1. Present application has been filed by the original informant under Section 439(2) of the Code of Criminal Procedure to challenge the order dated 10-09-2020 passed by the learned Additional Sessions Judge, Nanded in Miscellaneous Criminal Bail Application No.355 of 2020 thereby granting anticipatory bail to present respondent Nos.1 to 3.

2. The applicant is the original informant. Respondent Nos.1 to 3 are the original accused persons. The applicant has lodged FIR i.e. Crime No.192 of 2020 registered with Vimantal Police Station, Dist. Nanded on 07-06-2020

against present respondent Nos.1 to 3 for the offences punishable under Sections 395, 379, 447, 427, 323, 143 and 147 of Indian Penal Code.

3. Heard learned Advocate Mr. A. D. Hande for applicant and learned Advocate Mr. S. W. Munde for respondent No.4 – State. It is not even necessary to issue notice to respondent Nos.1 to 3.

4. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge did not see the seriousness of the offence and granted bail when offence under Section 395 of Indian Penal Code was involved. It was canvassed before the learned Additional Sessions Judge that the accused persons have filed Regular Civil Suit No.448 of 2006 for declaration of ownership and perpetual injunction, however, the learned Judge failed to consider that it was against their uncles and other persons. The present informant was not a party to that suit. The plots/land owned by the applicant and the suit property in Regular Civil Suit No.448 of 2006 is different. There was absolutely no civil angle to the dispute. The learned Additional Sessions Judge failed to consider that bare reading of the FIR would show that there is ample evidence against the accused persons and they had actively participated in commission of the crime. The material of the applicant amounting to Rs.35,000/- was stolen by the accused persons. When the entire incident was videographed, at that time, the mobile was snatched and recovery of that mobile would be an important piece of evidence, which could have been recovered only from the

accused persons. Granting anticipatory bail is an extraordinary remedy which has to be sparingly used, yet, it has been routinely granted to the accused persons and, therefore, present application has been filed.

5. Perusal of the impugned order would show that all the details have been considered and there is application of mind by the learned Additional Sessions Judge. Though it has been tried to be pointed out that the properties are different, yet, perusal of the judgment in Regular Civil Suit No.448 of 2006 would show that there is a property which is situated at Asadullabad, Tq. and Dist. Nanded which has been referred as Survey No.40 and it was to the extent of 'L' shape strip. Now, in the FIR, the property is said to be two plots out of City Survey numbers. There is nothing on record at this stage to show that the survey number has been converted to city survey number, but then in the later part of the FIR it is tried to be contended that the entire Survey No.40 situated at Asadullabad admeasures 30 to 32 Acres and it is then tried to be stated that the judgment by the Civil Court does not make it clear as to where exactly the suit property is situated. Even if we consider those contents of the FIR, then definitely there appears to be civil angle to the dispute. When other grounds appear to have failed, only ground that could have been considered was necessity for interrogation of accused for discovery, but then the learned Additional Sessions Judge relied on the decision in *Sushila Aggrawal and others Vs. State (NCT of Delhi) and another, (Special Leave Petition (Criminal)*

No.7281-7282/2017) and then come to the conclusion that in view of the ratio therein, the anticipatory bail application cannot be rejected only on the count of collecting evidence by way of discovery under Section 27 of the Indian Evidence Act. When the legal position is there and it has been used by the learned Additional Sessions Judge, then we cannot say that the order suffers from illegality.

6. In *Myakala Dharmarajam and others etc. Vs. State of Telangana and another*, (2020 CRI. L. J. 1457 : AIROnline 2020 SC 5), it has been observed that, *“the factors are to be considered while granting bail have been considered by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario and, therefore, the certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is any prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.”* Therefore, it was not necessary for the learned Judge to go into each and every allegation, consider the evidence that was collected uptill now. Only overview of the evidence collected ought to have been taken.

7. The Hon'ble Supreme Court in ***Ms. X Vs. State of Telangana and another, (2018 SAR (Criminal) 786)*** has held that, *"it is a settled principle of law that bail once granted should not be cancelled, unless a cogent case based on a supervening event made out"*. The principles laid down in ***Daulatram Vs. State of Haryana, (1995) 1 SCC 349*** have been reiterated, those are as follows :-

"Rejection of a 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, broadly (illustrative and not exhaustive) are: interfere or attempt to interfere with the due course of administration of justice or evasion of 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."

8. Further, the observations from ***Dataram Singh Vs. State of Uttar Pradesh (2018 (2) SCALE 285)*** has also been taken, which reads thus :-

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an

order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, 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.”

9. This Court in ***Mirza Ilyas Baig Mirza Sharif Vs. State of Maharashtra (2006 ALL MR (Cri) 1315)*** has observed that, “*when liberty is granted to the citizen, it should not be taken away unless there is sufficient material against him. So also, the Court entertaining the matter should have cautious approach. Court cannot act in a mechanical manner.*”

10. Since no error has been committed by the learned Additional Sessions Judge while granting anticipatory bail to respondent Nos.1 to 3 and also care has been taken to impose necessary conditions, there is no need to invoke the powers of this Court under Section 439(2) of the Code of Criminal Procedure. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]