

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.121 OF 2020

Anil Hiralal Patil

... Applicant

Versus

1. The State of Maharashtra
2. Vaibhav Parashar Joshi

... Respondents

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Mr. K. D. Shinde and Mr. P. S. Pawar, Advocate for applicant.
Mrs. R. P. Gaur, APP for respondent No.1 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 2nd November, 2020

ORDER :

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to present respondent No.2 by order dated 18-09-2020 passed by the learned Additional Sessions Judge, Jalgaon in Anticipatory Bail Application No.595 of 2020.

2. Present applicant is the original informant who had lodged report against present respondent No.2 i.e. Crime No.381 of 2020 registered with Dharangaon Police Station, Dist. Jalgaon for the offences punishable under Sections 420, 417, 469, 176, 500, 504 read with Section 34 of Indian Penal Code.

3. Present respondent Nos.2 is the original accused No.3.
4. Heard learned Advocate Mr. K. D. Shinde and learned Advocate Mr. P. S. Pawar for applicant and learned APP Mrs. R. P. Gaur for respondent No.1 – State. It is not even necessary to issue notice to respondent No.2.
5. It has been submitted on behalf of the applicant that the present informant had come with the case that present respondent No.2, who is a practicing Advocate, had published a public notice in daily Punyanagari newspaper in respect of Gut No.8 of village Chinchpura Shivar Tq. Dharangaon, Dist. Jalgaon. In the said notice, it was stated that accused Nos.1 and 2, who are the clients of present respondent No.2, have entered into agreement to purchase the said land, which is owned by father of the present applicant. In fact, the land has been allotted to the applicant and his brother. Applicant is in possession and cultivating land admeasuring 1 Hectare 76 R as owner thereof. The applicant replied to the said public notice on 19-05-2020 stating that nobody has entered into any transaction with accused Nos.1 and 2. A further reply was given by present respondent No.2 on 08-06-2020 stating that the contents of reply of the applicant to the public notice is false. Thereafter, the applicant requested respondent No.2 to give detailed information and documents along with addresses of accused Nos.1 and 2, however, it was not complied with by respondent No.2. The applicant then made inquiry and it was transpired that accused Nos.1 to 3 in conspiracy with each other had prepared false document in

respect of the said land, therefore, he lodged the FIR vide Crime No.381 of 2020 on 18-07-2020 for the offences punishable under Sections 420, 417, 469, 176, 500, 504 read with Section 34 of Indian Penal Code. The learned Advocate for the applicant further submitted that respondent No.2 had applied for Anticipatory Bail bearing No.595 of 2020 before the learned Sessions Court, Jalgaon and it came to be allowed on 18-09-2020. In fact, respondent No.2 had acted against the professional ethics. He ought to have given correct information to the Investigating Officer. The learned Additional Sessions Judge failed to consider that the custody of respondent No.2 is necessary for the purpose of investigation. Absolutely no proper reasons have been assigned and, therefore, that order deserves to be cancelled.

6. At the outset, it is to be noted that the facts in the FIR are mostly civil in nature giving rise mainly to the civil remedy. The question arises as to how either Section 417 or Section 420 is attracted. The FIR is absolutely silent regarding any representation made to the informant prior to entering into the transaction by present respondent No.2. It is then stated that a false document has been prepared which is styled as *Sauda Pavati*. But, it appears that respondent No.2 had already sent a notice to the applicant on 24-06-2020 i.e. much prior to the lodging of FIR, though it appears that the present applicant had given reply to the public notice on 19-05-2020. The learned Additional Sessions Judge has considered the documents as well as the notice issued by

police under Section 160 of the Code of Criminal Procedure to present respondent No.2. Present respondent No.2 has specifically stated in his application before the learned trial Judge that he has acted in view of the instructions given by his clients, but the police machinery gave the notice as the forged document is with respondent No.2. Specific observation is made that the police have asked respondent No.2 to bring original document at the time of inquiry. It appears that the present applicant wants to settle the score against respondent Nos.1 to 3 through police. The applicant in the present application has not mentioned that he has knocked the doors of civil Court uptill now. The learned Additional Sessions Judge, while considering the application for anticipatory bail has gone through the contents of the FIR, other police documents, especially the notice under Section 160 of the Code of Criminal Procedure. A reasoned order has been given. Further, it was also noted that interim relief was granted on 04-09-2020 and necessary conditions have been imposed. Further, at the time of confirmation of the said interim relief, when the final hearing was concluded, again proper terms have been imposed so that the investigation should not hamper. Therefore, when an appropriate and legal order has been passed, it cannot be cancelled.

7. 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.

8. 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.”

9. 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.”

10. 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.*”

11. Therefore, after taking note of the facts of the case, the reasons given in the impugned order and the law on the point i.e. under Section 439(2) of the Code of Criminal Procedure, no case is made out to cancel the bail. The investigation is still going on and the Investigating Officer has not come with the case that the investigation would be hampered in any way. It appears that with some *mala fide* intention, the present application has been filed and, therefore, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm